



The FTC in 2009

Federal Trade Commission Annual Report, March 2009





The four entrance doors of the Federal Trade Commission depict, clockwise from upper left: Columbus' Fleet; an eighteenth-century commercial ship; an early steamship; a large sea plane; a modern ocean liner; and a clipper ship. The Section of Painting and Sculpture of the Board of Architectural Consultants, created by Andrew Mellon to manage the overall Federal Triangle plan, directed the sculptor, William M. McVey, to create the specific entrance door images. The aluminum grilles were cast by the General Bronze Co., of Long Island City, NY in 1938.



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March 2009

Federal Trade Commission

Jon Leibowitz, Chairman
Pamela Jones Harbour, Commissioner
William E. Kovacic, Commissioner
J. Thomas Rosch, Commissioner

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Letter from the Chairman

As we face the nation's dire financial crisis, the Commission's dual mission to protect consumers and promote competition is more critical than ever. This annual report describes our efforts and initiatives since last March. The accomplishments in the following pages are the result of our talented and dedicated staff, whose hard work has made the FTC one of the most remarkable and respected agencies in government.



On the competition side, the Commission has advanced a vigorous antitrust enforcement program to prevent anticompetitive mergers and business conduct. A leading priority has been attacking collusive “pay-for-delay” settlements in the pharmaceutical industry, where the brand name drug company pays the generic drug company to delay its entry into the market. These deals cost billions of dollars – for consumers and ultimately for the government, which pays almost one-third of the nation's prescription drug costs. In addition, the Commission filed a record number of cases challenging proposed and consummated mergers as threatening to harm competition in a vast array of markets. Even in “down markets,” the Commission must hold the line against industry consolidation that may threaten competitive markets far into the future.

On the consumer protection side, there can be no greater priority than addressing the credit crisis and protecting consumers in financial distress. This year, the Commission increased enforcement efforts against mortgage foreclosure “rescue” scams, bogus debt relief and credit repair schemes, unlawful debt collection operations, and deceptive credit offers to consumers in the subprime market. The FTC also initiated actions against brokers and lenders who deceptively advertised mortgages with low “teaser” rates. In addition, the FTC charged Bear Stearns Companies and EMC Mortgage Corporation with unlawful practices in servicing and collecting mortgage loans; the settlement returned \$28 million to 86,000 consumers. Beyond financial services, the FTC continued its steady workload in the areas of consumer privacy, data security, and online behavioral marketing; telemarketing fraud and do not call enforcement; deceptive health and weight loss claims; and “green” marketing.

In the global marketplace, antitrust enforcement and consumer protection increasingly involve cross-border efforts. The Commission continues to work through multilateral organizations to promote convergence toward sound policies and has used the tools provided by the 2006 U.S. SAFE WEB Act to increase the effectiveness of its cross-border cooperation and enforcement. This year, for example, the FTC worked with its global partners on a number of merger enforcement cases and shut down one of the largest international “spam gangs.” The Commission also expanded its technical assistance program for competition and consumer protection agencies around the world.

Finally, the Commission leverages its limited resources beyond law enforcement through advocacy and education. The Commission continues to advocate for competition and consumers before the courts and government agencies; to conduct economic research; and to promote policy development through workshops and reports. The FTC also works to educate millions of consumers and businesses about their rights and responsibilities under the laws we enforce.

As I embark upon my tenure as Chairman, I am proud of the work the Commission has completed this past year and confident that we will be able to tackle the challenges ahead. I look forward to working with my fellow commissioners, the agency’s exceptional staff, and our law enforcement partners across the country and around the world, to ensure that the Commission continues to protect American consumers.

A handwritten signature in black ink, reading "Jon Leibowitz". The signature is written in a cursive, flowing style with a large initial "J".

Jon Leibowitz
Chairman

A Year in Highlights



The Federal Trade Commission Headquarters building is designed in the Classical Revival style of architecture. The buildings within the Federal Triangle were designed according to principles of the City Beautiful movement, which espoused the use of formal arrangements, axial streets, and monumental, classical public buildings in city planning. Earlier in his career, the FTC building's architect, Edward H. Bennett, was an assistant to prominent architect and planner Daniel H. Burnham, a pioneer in city planning responsible for the layout of the 1893 World's Columbian Exposition in Chicago.

Text drawn from General Services Administration website.



A Year in Highlights

The work of the FTC is critical to protecting consumers and preserving competitive markets. As the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy, the FTC's work touches the economic life of every American. The FTC performs its unique mission through the use of a variety of tools, including law enforcement, rulemaking, research, studies on marketplace trends and legal developments, and consumer and business education.

This year the Commission undertook a number of major initiatives designed to improve the way the agency works and to answer pressing needs in the marketplace during these difficult economic times. These efforts are part of the Commission's commitment to protect consumers as they make choices in rapidly changing marketplaces, especially those facing difficult decisions, perhaps for the first time. They span the agency's mission and expertise and called upon staff from many parts of the agency. Below are some highlights from this year's activities; while not an exhaustive list, these projects reflect the breadth and impact of the FTC's work on behalf of consumers.

Promoting Competition to Keep Health Care Costs Down. The rising cost of health care is a major concern for all Americans. The FTC is dedicated to ensuring health care markets are free and competitive so that costs are kept down and there are incentives to provide low-cost, high-quality health care. The Commission acted to promote health care competition on several fronts this year. The Commission continued to pursue pharmaceutical companies that would rather collude than compete, signing "pay-for-delay" agreements to keep lower cost generic drugs off the market, and potentially costing consumers and taxpayers billions of dollars a year. The Commission stopped a hospital merger that it alleged would have given a Northern Virginia hospital provider nearly 75% of beds in the region. The Commission also put an end to conduct by two physicians' groups that it charged boycotted insurance payors to keep reimbursement rates high. The Commission's health care enforcement agenda is as active as it has ever been to ensure that higher health care costs are not attributable to anticompetitive conduct or combinations.

Economic Downturn Leads to Increase in Deceptive/Unfair Credit Practices Enforcement. The current economic downturn, increased mortgage foreclosures, and restricted access to credit leaves many consumers in financial distress and vulnerable to unfair and deceptive business practices. Over the past year, the Commission has actively challenged unlawful credit practices, particularly those related to subprime credit or lending. For example, a settlement agreement with CompuCredit Corporation, resolving allegations that the company deceptively marketed credit cards to consumers in the subprime market, will provide consumers an estimated \$114 million in credits and cash refunds. In addition, the Commis-

sion filed six actions against businesses promising foreclosure rescue, and it joined with 24 state agencies to challenge claims by 36 credit repair operations that they could remove accurate and timely information from a consumer's credit report. Other enforcement activity targeted discrimination in mortgage pricing, deceptive home mortgage advertising, illegal debt collection activities, and certain payday lender practices. The Commission also convened a Debt Settlement Workshop to examine the for-profit debt settlement industry and the adequacy of existing consumer protections in that area.

Urging Self Regulation by Behavioral Advertisers. The FTC has periodically examined the consumer privacy issues raised by online behavioral advertising – the practice of tracking an individual's online activities to deliver advertising tailored to his or her interests. This year, the FTC staff issued a report containing a set of self-regulatory principles to guide industry use of behavioral advertising. The report, *Self-Regulatory Principles for Online Behavioral Advertising*, discusses the potential benefits of behavioral advertising to consumers, including the free online content that advertising generally supports and personalization that many consumers appear to value. It also addresses the privacy concerns that the practice raises, including the invisibility of the data collection to consumers and the risk that the information collected – including sensitive information regarding health, finances, or children – could fall into the wrong hands or be used for unanticipated purposes. Consistent with the FTC's overall approach to consumer privacy, the report seeks to balance the potential benefits of behavioral advertising against the privacy concerns it raises and to encourage privacy protections while maintaining a competitive marketplace.

Record Number of Filed Merger Cases. The Commission continued its vigorous merger enforcement program and, despite a decline in the number of Hart-Scott-Rodino (HSR) premerger notification filings, filed a record number of preliminary injunction and administrative complaints since March 2008. The FTC filed six actions challenging proposed and consummated mergers and acquisitions as threatening to harm competition in a range of markets, from hospital services and retail goods, to pharmaceuticals and technology products. The Commission remains vigilant in its efforts to stop anticompetitive combinations that may lead to higher prices, reduced levels of service, fewer choices, or less innovation. Where it cannot resolve its concerns by consent, the Commission will file suit.

FTC Goes Green. The use of “green” marketing claims has expanded rapidly in recent years, as consumers become more concerned about environmental and energy issues. Recognizing the importance of ensuring accurate information in the marketplace on energy consumption and the environmental impact of various products and services, the Commission has undertaken a “green” initiative, including a review of the Commission's Guides for the Use of Environmental Marketing Claims (Green Guides). In connection with that review, the Commission hosted workshops dealing with carbon offsets and renewable energy certificates; green packaging claims; and green claims for tex-

tiles and building materials. On the law enforcement front, the FTC has addressed deceptive claims for home insulation products and for devices advertised to increase the gas mileage of cars. The Commission also has initiated rulemaking proceedings to examine energy labeling for light bulbs, televisions, and other consumer electronics, such as personal computers and monitors. Research on consumer perception of green marketing claims also is underway, subject to OMB approval, that will inform the Commission about how consumers understand words such as “eco friendly,” “sustainable,” and “carbon neutral.”

Expanded International Technical Assistance. Nothing substitutes for face to face interaction when it comes to forging the relationships necessary to support the needs of developing foreign competition and consumer agencies and to promote effective enforcement cooperation and policy convergence with foreign counterparts. Using its authority under the U.S. SAFE WEB Act of 2006, the FTC established an International Fellows and Interns Program to bring foreign agency officials to Washington to work side by side with expert FTC staff. This year, for the first time, the Commission sent FTC staff to work for a foreign counterpart agency for several months. Finally, the Commission funded technical assistance to jurisdictions not previously served, such as Turkey and Brazil.

***YouAreHere* Website for Kids.** Recognizing that spending habits begin at a young age, the FTC created YouAreHere, a new website to educate kids about how the market works and how they can be informed shoppers. The experiential site allows kids to explore a shopping mall where they can design and print advertisements, uncover suspicious claims in an ad, and guess the retail price of various candies based on supply and demand. The food court features lessons on making smart choices based on product attributes and price, and includes a movie on the history of the antitrust laws. Kids.gov, the official kids’ portal for the U.S. government, chose YouAreHere as Site of the Month for November 2008. YouAreHere is a place where anyone can learn about the work of the FTC.

First Annual FTC Microeconomics Conference. The Bureau of Economics hosted a two day, academic-style conference that brought together scholars in industrial organization, information economics, game theory, quantitative marketing, consumer behavior, and other areas related to the FTC’s antitrust and consumer policy missions. The Bureau of Economics, with its staff of 70 PhD microeconomists and over a dozen research analysts, organized this conference to provide an opportunity for a critical exchange of ideas on how best to tackle market conduct that threatens consumer welfare. Topics included: online advertising; information disclosure; horizontal and vertical mergers; bundling, loyalty, and other discounts; dynamic oligopoly; intellectual property; and behavioral and experimental economics.

Amendments to the Rules of Practice. The FTC’s role as an independent agency with adjudicative powers demands that it maintain fair rules to determine facts and render timely and sound

decisions in its adjudicative proceedings. This year, the Commission adopted interim final rules amending Parts 3 and 4 of the agency's Rules of Practice. The rule amendments represent a comprehensive and significant revision of the Commission's adjudicatory process designed to expedite the prehearing, hearing, and appeal phases, streamline discovery and motion practice, and ensure that the Commission applies its substantive expertise, as appropriate, earlier in the process. The amended rules include, for the first time, deadlines for the Commission to resolve appeals of initial decisions by the Administrative Law Judges.

Supporting Efforts for FTC Reauthorization. The Commission testified before the Senate Committee on Commerce, Science, and Transportation, highlighting the agency's accomplishments and providing comments on the proposed Federal Trade Commission Reauthorization Act of 2008. The reauthorization bill included new tools to improve and streamline the FTC's consumer protection and competition efforts, such as independent litigating authority to obtain civil penalties in federal courts and authority to allow the FTC to represent itself before the Supreme Court. The bill also would have allowed the agency to hire Administrative Law Judges with specialized experience, repealed certain antiquated exemptions to the Federal Trade Commission Act, and granted authority to use the streamlined procedures under the Administrative Procedure Act to conduct certain consumer protection rulemaking. Reauthorization legislation is likely to be introduced in this session of Congress.

The FTC at 100: Into Our Second Century

A few years from now, the FTC will reach the one hundredth anniversary of the statute that gave it life. How well is the agency fulfilling the destiny that Congress foresaw for it in 1914? What type of institution should the Commission aspire to be when its second century begins in 2014?

This year, Commission staff conducted a self-assessment to consider these and other questions. In the late 1960s, the Commission's performance attracted scalding criticism that raised doubts about its continued existence. Forty years later, the agency stands in the front ranks of the world's competition policy and consumer protection institutions. The Commission's success is based, in part, on a culture that understands that becoming a superior institution demands a willingness to ask hard questions about the agency's purposes and performance. Today, the achievements of our foreign counterparts provide further motivation to revisit basic questions.

The FTC at 100 project decoupled the process of self-assessment from any single electoral cycle to focus on adjustments that will improve the agency over the long term. By targeting the Commission's centennial, the exercise took a longer-term perspective to identify approaches for improvement that are not only good today but will be good in the decades to come. The agency conducted extensive interviews and held 12 workshops (including seven outside the U.S.) at which expert observers from academia, business groups, consumer organizations, and government bodies discussed the Commission's programs, operations, and organization. The contributions of foreign competition and consumer protection agency colleagues and stakeholders here at home helped make the report, *The Federal Trade Commission at 100: Into Our 2nd Century*, a benchmark not only for the FTC, but also for the world trade community.

The emphasis throughout the study was on institution-building. Although discussions about competition law and consumer protection tend to focus on doctrinal issues – the “physics” of competition and consumer protection policy – these important policy debates can obscure the critical task of creating institutions and programs that transform theory and concepts into effective programs. This study



was about the “engineering” of competition and consumer protection policymaking. It recognized that successful public policy outcomes are the product of good physics and good engineering.

The FTC at 100 report also focused on the special attributes of the Commission: its combined competition and consumer protection authority and the wide range of tools at its disposal. These include not only litigation, but also policy research and development, advocacy, rulemaking, guidelines, guides, advisory opinions, consumer and business education, encouragement of appropriate industry self-regulation, and domestic and international partnerships and outreach.

The report offers recommendations on overarching issues, such as clearly articulating and implementing the agency’s mission; improving agency structure, leadership, and strategic planning; setting a policy R&D agenda; deploying agency resources; and measuring the effectiveness of agency actions. Among then Chairman Kovacic’s specific recommendations are: (1) that each initiative be measured by its capacity to improve the range of goods and services available to consumers or to strengthen the capacity of consumers to make well-informed choices; (2) that the agency explore ways to integrate knowledge and expertise more effectively across bureaus; (3) that the agency continue to build formal and informal relationships with other public institutions within the U.S., possibly through the establishment of domestic competition and consumer protection networks; and (4) that staff, when recommending an action, identify how to measure the effectiveness of the action.

Section One: Competition Mission

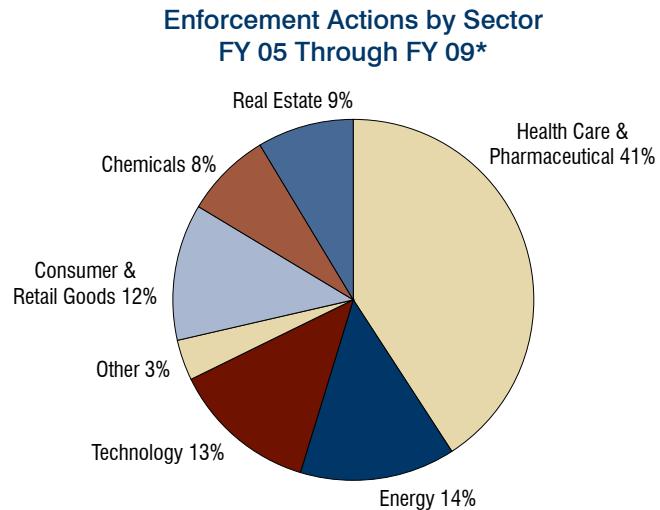


The design of the Federal Trade Commission building emphasizes the relationship between the building and its site. It is located on a triangular parcel of land; the building has an essentially triangular footprint with a semicircular portico at one end. The seven-story building sits on a simple base of Mount Airy granite. The walls above are clad in large, smooth blocks of Indiana limestone laid in a regular pattern. Bays on the midsection of each elevation are divided by pilasters (attached columns) or colonnades that form a loggia (open-air, arcaded space). The seventh story is slightly recessed. The portico is supported by Ionic columns. Aluminum window and door grilles accent the exterior. The low hipped roof is covered with red terra-cotta tiles. An interior courtyard provides natural light to interior offices. The building has undergone few changes since its construction.

Text drawn from General Services Administration website.

Competition Enforcement Retrospective

As shown here, the Commission manages its limited resources by addressing anticompetitive mergers and conduct in those industries that most impact consumers. This year, the Commission maintained an active workload of merger and nonmerger investigations, with some notable achievements in its efforts to protect consumers by promoting competitive markets.



* Represents Fiscal Year 2009 through February 28, 2009.

A Record Year for Filed Merger Cases

The Commission's merger enforcement program resulted in the filing of a record six preliminary injunction and administrative complaints since March 2008 challenging proposed and consummated mergers and acquisitions. These cases included mergers affecting competition for hospital services, battery separators, offshore waste disposal services for oil production, outdoor paving stones, drug treatments for heart defects in premature babies, and database systems for estimating the cost of auto repairs. Based on actions brought in the first five months of fiscal year 2009, the Commission is on pace to have a strong record of enforcement again this year.

The Commission also identified potential competitive problems in an additional 16 proposed acquisitions since March 2008 that were resolved by consent agreement, thereby preserving competition in overlap markets while allowing the companies to realize cost savings from their merger. This year's consent orders preserved competition for a variety of generic and brand name pharmaceuticals, specialty chemicals, medical devices used in coronary bypass surgery, electronic public records services, and several other consumer goods and technology services.

Finally, several proposed mergers and acquisitions were abandoned after Commission staff investigated and raised competition concerns over certain aspects of the proposed combination. These companies continue to compete in the product

lines identified, such as terminal services for light petroleum products, and class rings and commemorative products.

Holding the Line Against Anticompetitive Conduct

This year, the FTC brought several enforcement actions to challenge harmful conduct in the health care, pharmaceuticals, retail goods, real estate, and technology sectors. Most of these actions were resolved by consent agreement to stop the conduct, and in one case, the Commission sought relief in federal court. Through these enforcement actions, the FTC remains at the forefront of developing antitrust standards for competitor collaboration and unilateral conduct.

Examples include actions to stop:

- Payments by branded drug makers to generic rivals in exchange for agreeing not to sell a lower priced generic version
- Multiple Listing Service rules that prevent non-traditional and discount real estate professionals from having their listings available on popular websites listing homes for sale
- Joint fee negotiation by physicians groups that keep reimbursement rates high without providing benefits to patients
- A market division agreement between golf merchandise retailers

FTC Competition Enforcement Actions

Fiscal Year	Non Merger Enforcement Actions			Merger Enforcement Actions			
	Total	Consents	Part 3 Complaints and Injunctions	Total	Consents	Part 3 Complaints and Injunctions	Abandoned
2005	4	4	0	14	9	1	4
2006	6	5	1	16	9	0	7
2007	11	9	2	22	14	3 ²	5
2008	4	3	1	21	13	2 ³	6
2009 ¹	5	4	1	12	7	4	1

¹ October 1, 2008 to February 28, 2009.

² In FY 2007, the Commission authorized staff to file an administrative complaint and a federal court action in three matters. To avoid double counting, these matters are included only once.

³ In FY 2008, in one matter the Commission authorized staff to file an administrative complaint and a federal court action. To avoid double counting, this matter is included only once.



Section One: Competition Mission

Competition is good for consumers – individuals and businesses – and is good for the economy. Consumers benefit from open and competitive markets that yield lower prices and better quality goods and services. A vigorous marketplace provides the incentive and opportunity for the development of new ideas and innovative products and services. In times of economic downturn, the Commission is vigilant in its efforts to stop anticompetitive mergers or conduct that would rob American consumers of the innovation, productivity, growth, and low cost products and services that are the result of robust competition. The Commission uses a variety of tools to promote competition and protect consumers from anticompetitive mergers and business conduct. Through enforcement, study, advocacy, and education, the FTC protects consumers by promoting competitive markets.

Chapter 1: Competition Law Enforcement

The FTC is first and foremost an enforcement agency, dedicated on the competition side to preventing anticompetitive mergers and business conduct. The Commission reviews premerger notification filings, trade press articles, business and consumer complaints, and other information to uncover evidence of acquisitions and business practices that may restrain competition. When necessary, the Commission acts through its administrative process or in federal court. Moreover, the Commission seeks to deter harmful conduct by bringing enforcement actions with broad impact and by providing guidance to businesses on how to comply with the law.

The Commission manages its limited resources by focusing on industries that most directly affect consumers, such as health care, energy, chemicals, technology, and consumer goods and services. Since March 2008, the FTC's merger and nonmerger enforcement actions in these industry sectors demonstrate that much of the Commission's competition work has a direct impact on consumers by maintaining competition for the products and services they regularly purchase. From generic drugs and groceries, to garden paving stones and auto repair shop software, the Commission seeks to prevent the kinds of anticompetitive mergers and conduct in markets large and small that affect consumers every day.

A. Health Care Enforcement

The rising cost of health care is a matter of concern for consumers, employers, insurers, and the nation as a whole. Spending on health-related products and services is expected to total \$2.6 trillion in 2009, an amount equal to about 17% of U.S. Gross Domestic Product. Public and private money spent on prescription drugs alone is projected to be more than \$260 billion in 2009.

Every day, more Americans are forced to delay or forego health care services because they cannot afford them. Competition is a very important part of keeping consumer health care costs down. The Commission is committed to doing everything it can to promote price competition, choice, and innovation in health care markets. The Commission works to promote competition in health care by preventing anticompetitive health care mergers, stopping harmful joint conduct by health care providers, and eliminating impediments to entry by generic drug producers.

Exclusion Payment Agreements. Competition from generic pharmaceutical manufacturers provides consumers enormous savings. Thus, any restriction on the market for generic drugs can have a big impact on the nation's spending on drugs. To ensure this market remains free and competitive, the Commission continues to actively pursue agreements between branded drug companies

"This is yet another example of pharmaceutical companies turning competition on its head. Congress enacted the landmark 1984 Hatch-Waxman Act to encourage early generic entry and save consumers money, but these anticompetitive deals threaten to destroy that benefit and make crucial portions of the Hatch-Waxman Act extinct in all but name."

*Concurring Statement of Chairman Jon Leibowitz
in FTC et al v. Watson Pharmaceuticals, Inc.
(press release, February 4, 2009)*

and generic drug companies that prevent or delay the introduction of lower cost generic formulations. These agreements, referred to as "pay-for-delay" patent settlements, or "exclusion payments," prevent competition from new generic drugs that can drive prices for the branded equivalent down as much as 90%. These agreements allow branded manufacturers to share the profits from their branded drugs with potential generic rivals in exchange for delaying the roll out of a lower

priced generic and also prevent other generic manufacturers from entering the market.

The Commission challenged such an agreement between *Solvay Pharmaceuticals, Inc.*, maker of AndroGel, and two generic drug manufacturers to abandon their patent challenges and delay marketing a generic formulation for nine years, until 2015. Androgel is Solvay's branded testosterone-replacement drug, a prescription pharmaceutical with sales of more than \$400 million a year. The



Commissioner Harbour

The availability of follow-on biologics (FOBs) – which replicate biologic substances such as enzymes or hormones – will increase access to life-saving medicines. Commissioner Harbour has called for legislation to create a regulatory pathway for abbreviated FOB approval, by leveraging current FDA knowledge about existing products (as is done for generic drugs). In May 2008, the Commission sent Congress a letter explaining how an abbreviated FOB approval process could enhance competition, lower prices, and accelerate innovation, so long as unintended consequences are avoided. In Spring 2009, the Commission plans to issue a report on its November 2008 workshop on FOB competition issues.

Commission charged that, by agreeing to the delay in exchange for payment, Watson Pharmaceuticals, Inc. and Par Pharmaceutical Companies, Inc. were cooperating with Solvay on the sale of AndroGel, sharing the monopoly profits rather than competing. The case, which was filed jointly with the California Attorney General, is pending in the Central District of California. The Commission also continues to press its case against Cephalon, Inc. in the federal court in Philadelphia to block its exclusion payment agreement with four generic rivals.

Pharmaceutical and Medical Device Mergers. Again this year, the Commission reviewed many proposed and consummated acquisitions in the pharmaceutical and medical device industries. In total, the Commission reviewed acquisitions in these industries valued in excess of \$41 billion, and took the following actions to preserve competition that would otherwise be lost in the proposed merger or to restore competition in the case of a merger that has already taken place.

- **Drug Treatment for Heart Defects in Premature Babies.** The Commission is seeking a permanent injunction to remedy harmful effects from *Ovation Pharmaceuticals' 2006 acquisition of the rights to sell NeoProfen*, a drug with FDA approval for the treatment of patent ductus arteriosus, a congenital heart defect usually found in severely underweight premature babies. At the time of the acquisition, Ovation sold Indocin, the only other drug used to treat the same condition, which affects approximately 30,000 babies per year in the U.S. The Commission alleged that the acquisition of NeoProfen secured Ovation's monopoly and permitted it to raise the price of Indocin from \$36 to \$500 per vial, forcing desperate consumers to pay artificially inflated prices to treat this potentially fatal condition. The Commission's complaint, filed in federal court in Minnesota, seeks divestiture of assets related to one of the two treatments and disgorgement of all unlawfully obtained profits. The trial is slated to begin in September 2009.

- ▶ **Generic Anticonvulsants.** The Commission charged that *Sun Pharmaceutical Industries Ltd.’s proposed acquisition of Taro Pharmaceuticals Industries, Ltd.* would substantially reduce competition and likely result in higher prices for three distinct generic formulations of the anticonvulsant drug carbamazepine, used widely to prevent and control seizures. In order to remedy these concerns, Sun agreed to divest all of its rights and assets needed to develop three generic forms of carbamazepine.
- ▶ **IV-Iron Drugs Supplied to Dialysis Clinics.** The Commission challenged *Fresenius Medical Care’s proposed purchase from Daiichi Sankyo Company of an exclusive sublicense* to manufacture and supply Venofer to U.S. dialysis clinics. Venofer is an intravenously administered iron sucrose preparation used primarily to treat iron-deficiency anemia in dialysis patients with chronic kidney disease. The Commission alleged that the agreement would have given Fresenius, the largest operator of dialysis clinics in the country, the ability to artificially inflate its internal costs for Venofer and, because of its market presence, effectively increase the amount Medicare pays for the drug. The Commission issued a consent order requiring Fresenius to report an objective market-based price for Venofer to Medicare.
- ▶ **Generic Drugs.** The Commission settled antitrust concerns raised by the *proposed \$8.9 billion acquisition of Barr Pharmaceuticals by Teva Pharmaceutical Industries.* The Commission charged that the proposed acquisition would have lessened competition in the markets for 17 commonly used generic medications, including drugs used in the treatment of cancer, bacterial infections, diabetes, acid reflux, and depression, as well as several varieties of oral contraceptives. The Commission’s consent agreement requires both Teva and Barr to sell assets in 29 U.S. markets to either Watson Pharmaceuticals or Qualitest Pharmaceuticals to preserve competition for these generic drugs.
- ▶ **Oral Long-Acting Opioids.** The Commission issued a consent order to protect competition in the market for oral long-acting opioids (LAOs) in connection with *King Pharmaceuticals’ proposed \$1.6 billion acquisition of rival drug maker Alpharma Inc.* The transaction would have joined the two leading producers of morphine sulfate oral LAOs in the U.S., a \$4 billion market which is already highly concentrated. The Commission’s consent order requires King to divest its Kadian business to Actavis, a company which already manufactures the drug for King and which could then produce a generic equivalent of the drug sooner than would have been permitted under King’s patent.
- ▶ **Endoscopic Vessel Harvesting Devices.** The Commission charged that *Getinge AB’s proposed \$865 million acquisition of rival Datascope Corporation* would give the combined company a near-monopoly share of the U.S. market for endoscopic vessel harvesting (EVH)

devices used in coronary bypass surgeries. EVH devices are used to remove veins from the patient's leg or arm to be used to bypass blocked coronary arteries. The companies are the two principal suppliers of these products, which allow for minimally invasive vessel harvesting, resulting in less pain and scarring, lower risk of infections, and reduced hospital stays for coronary bypass patients. To settle charges that the proposed acquisition would be anticompetitive, Datascope agreed to sell its EVH product line to an FTC-approved buyer.

Hospital Mergers. Competition between hospitals helps control health care costs and provides vital incentives to improve services to patients at their most vulnerable times. The cost of providing quality health care services through hospitals is a major expense for health insurance plans, employers, unions, and ultimately individual patients, many of whom may be forced to reduce or even drop their health insurance coverage as costs increase. This year brought two important developments in the Commission's efforts to promote competition among hospitals.

- ▶ ***Inova Health System/Prince William Health System.*** The Commission successfully blocked Inova Health System's proposed acquisition of Prince William Health System, after filing an administrative complaint and an action for a preliminary injunction in the Eastern District of Virginia. The Commission's federal court complaint, filed jointly with the Virginia Attorney General, alleged that the acquisition would have reduced competition for general acute care inpatient hospital services in the Northern Virginia area, leading to higher prices for consumers and reduced incentives for improved services. The Commission charged that the merger, which would have given Inova control of 73% of the licensed hospital beds in Northern Virginia and six of the ten hospitals in the region, would have eliminated the beneficial competition that allows health care plans in that area to negotiate for lower prices. Soon after the FTC filed its complaint, the companies announced their decision to abandon their merger plans.



- ▶ ***Evanston Northwestern Healthcare Corp./Highland Park Hospital.*** The Commission issued its final opinion and order to restore competition that was lost when Evanston Northwestern Healthcare Corporation (ENH) acquired rival Highland Park Hospital. In 2007, the

Commission affirmed an October 2005 ruling by an administrative law judge that found that ENH's acquisition of Highland Park Hospital was anticompetitive and had increased the cost of hospital services in the Chicago environs. The Commission order requires ENH to establish separate negotiating teams – one for Evanston and Glenbrook hospitals, and another for Highland Park – to set payor insurance reimbursement rates for inpatient and outpatient services. The order also requires ENH to use separate teams unless a payor specifically opts to negotiate for services at all ENH hospitals. At the request of a payor, ENH must submit price disputes, first to mediation and then to arbitration, to determine fair prices or terms.

Anticompetitive Conduct by Physicians Associations. The Commission continues to monitor joint price setting behavior by physicians organizations and takes action to stop those collective activities that seek to keep reimbursements rates high without offering the benefits of integrated health care delivery. The Commission brings actions to stop collective bargaining with payors through a physicians organization when the conduct amounts to price fixing or a group boycott to enforce a price fixing agreement. Last year, the U.S. Court of Appeals for the Fifth Circuit upheld a Commission decision that *North Texas Specialty Physicians* (NTSP), a group of independent competing physicians based in Fort Worth, had restrained competition among its member physicians.

“NTSP’s challenged practices erect barriers between payors and physicians who would otherwise be willing to negotiate directly with those payors. It also erects obstacles to price communications between payors and physicians. The Commission concluded, and we agree, that NTSP engaged in concerted action to increase its bargaining power.”

Judge Priscilla R. Owen, North Texas Specialty Physicians v. FTC, Civil Action No. 06-60023 (5th Cir. May 14, 2008)

NTSP had orchestrated a price agreement among its physicians, negotiated price terms in payor contracts on behalf of its physicians, and refused to deal with payors except on collectively agreed-upon terms. The Court agreed with the Commission that the anticompetitive effects of NTSP's practices were “obvious.” Per remand by the Court, the Commission modified one provision of its remedial

order, issuing a Final Order in September 2008. The Supreme Court declined to review the decision.

The Commission also settled two similar claims this year. In *Boulder Valley Individual Practice Association* and *All Care IPA*, the Commission obtained consent agreements to restore competition among physicians in Boulder County, Colorado and Modesto, California. The consent orders prohibit each physician group from entering into agreements between or among physicians: 1) to negotiate on behalf of any physician with any payor; 2) to refuse to deal, or threaten to refuse to deal, with any payor; 3) to designate the terms, conditions, or requirements upon which any physician deals, or is willing to deal, with any payor, including, but not limited to price terms; and 4) not to

deal individually with any payor, or not to deal with any payor through any arrangement other than one involving the individual practice association.

B. Energy Industry Enforcement

The petroleum industry plays a crucial role in our economy. Indeed, few issues are more important to American consumers and businesses than the decisions being made about current and future energy production and use. Not only do changes in gasoline prices affect consumers directly, but the price and availability of gasoline also influence many other economic sectors. No other industry's performance is more deeply felt, and no other industry is more carefully scrutinized by the FTC.

Energy Mergers. While the FTC does not regulate energy market prices, the agency plays a critical role in maintaining competition and protecting consumers in energy markets. The Commission has been particularly vigilant regarding mergers in the oil industry that could harm competition. It examines any merger and any course of conduct in the industry that has the potential to decrease competition and thus raise the price of gasoline or other petroleum products. In 2008, the Commission reviewed 27 HSR filings regarding proposed acquisitions in the energy industry. These included a joint venture among natural gas pipeline companies and an acquisition of retail gas station dealers in several western states. In two matters, the parties abandoned the proposed mergers in light of Commission action.

- ▶ **Oil and Natural Gas Waste Disposal Services.** The FTC issued an administrative complaint to block the *proposed \$85 million acquisition of Newpark Environmental Services by CCS Corporation*, a subsidiary of Red Sky Holdings LP. The Commission charged that the proposed consolidation of two of the leading providers of offshore exploration and production waste disposal services to major oil and gas companies in the Gulf Coast Region was anticompetitive and would lead to high prices and decreased service levels. The Commission successfully blocked the transaction when CCS abandoned the merger following the issuance of the Commission's complaint.

"We were fully prepared to present at trial the strong evidence that [CCS' acquisition of Newpark] was anticompetitive and would have resulted in higher prices and diminished service. The abandonment of the deal in the face of our challenge is a victory for consumers."

*David Wales, Acting Director, BC
(press release, November 24, 2008)*

- **Light Petroleum Products Terminals.** In one of its larger recent efforts in the energy sector, the Commission investigated Marathon Oil Company's proposed acquisition of CITGO Petroleum's light petroleum products terminals in a number of Ohio cities, as well as CITGO's interest in the Inland Pipeline, an intrastate products pipeline. The Commission closed its investigation following notification by the parties that they had abandoned the transaction.

Industry Monitoring. In addition to investigating mergers and acquisitions, the FTC undertakes other antitrust enforcement work in the energy industry. For example, in a project unique to the petroleum industry, the Commission actively monitors retail and wholesale prices of gasoline and diesel fuel, scrutinizing price movements in 20 wholesale regions and approximately 360 retail areas across the country. Where unusual price movements are identified, the Commission examines whether any such movements might result from anticompetitive conduct that violates Section 5 of the FTC Act.

As part of this monitoring project, the Commission reviews daily data from the Oil Price Information Service, a private data collection agency, and receives information weekly from the public gasoline price hotline maintained by the Department of Energy (DOE). Using an econometric model to determine whether current retail and wholesale prices are anomalous in comparison to the historical price relationships among cities, the project alerts the staff to unusual changes in gasoline and diesel prices so that timely inquiries can be made. When price increases do not appear to be market-driven, the Commission consults with the Energy Information Administration of the DOE and offices of appropriate state Attorneys General.

Based on information gleaned through the agency's gasoline and diesel fuel price monitoring project and other sources, the Commission identified and examined the following pricing anomalies.

- **Bulk Supply.** The agency investigated the bulk supply and demand conditions and markets for gasoline and diesel fuel throughout the Pacific Northwest region, with a particular focus on price anomalies in western and eastern Washington State and supply conditions in Petroleum Administration for Defense Districts IV and V. Through the analysis of large quantities of documents and data, as well as investigational hearings and witness interviews, the Commission sought to identify refinery, transportation, and terminal disruptions that may have affected bulk supply of gasoline and diesel to the region during the relevant period. The investigation identified no evidence of illegal collusion or unilateral conduct. Observed price anomalies were most likely the result of a series of identified, unrelated events, including longer-than-expected refinery maintenance and unplanned disruptions to refinery operations.
- **Diesel and Jet Fuel.** The Commission conducted an analysis of price increases for diesel fuel and jet fuel, with particular focus on why diesel and jet fuel prices had risen relative to

gasoline prices. The Commission collected data from a variety of sources, including information on refinery capacity utilization, imports and exports, trends in local prices for diesel fuel and gasoline, and refinery profitability. The analysis concluded that a number of significant market factors, not anticompetitive conduct, drove the price increases.

Mike Vita - BE

Since joining the Bureau of Economics in 1984, Mike has contributed significantly to the antitrust mission of the FTC with important research as well as with economic analysis of the Commission's antitrust investigations. Mike's published research includes articles on health care competition, the competitive impact of gasoline divorcement policies, and vertical antitrust policy. Appointed an Assistant Director for Antitrust II in 2000, Mike has been actively involved in many of the FTC's recent major antitrust analyses and litigations including: Evanston/ENH, Inova/Prince William Hospital, Google/DoubleClick, and Whole Foods/Wild Oats.



- **Retail Gasoline.** The Commission continues to evaluate reported differences in gasoline prices between Cape Cod and off-Cape locations, gathering and analyzing a wide range of relevant data, trade press reports, and other information. The Commission is working with the Massachusetts Attorney General's office on this matter. The Commission also is examining recent, higher-than-expected gasoline prices in and around Buffalo and in northern Vermont.
- **Hurricane Ike.** When Hurricane Ike made landfall, with its potential for affecting the energy infrastructure of the U.S. Gulf Coast, the Commission established a Hurricane Ike Task Force to track and analyze gasoline price trends and supply information. The Commission consulted daily with DOE about complaints it received on the DOE Gasoline Price Hotline. The Commission also consulted with the offices of state Attorneys General in affected states regarding pricing issues; this support continues today.

C. Chemical Industry Enforcement

This year an unusually large number of transactions in the chemical industry raised competitive concerns. The Commission reviewed several proposed acquisitions between chemical companies manufacturing products used in high performance applications. In addition, the Commission succeeded in obtaining a divestiture to restore competition in markets for specialty and industrial storage tanks after a federal appeals court upheld a Commission order.

- **Specialty Epoxy Resins.** The Commission intervened in *Hexion's proposed \$10.6 billion acquisition of Huntsman Corporation* to preserve competition in the North American markets for specialty epoxy resins and methyl diisocyanate (MDI). Epoxy resins are used in a variety of applications including aerospace composites, wind turbine blades, and electric power generation. MDI is a chemical used in a range of applications including construction insulation, refrigeration, and composite wood products. The Commission charged that the proposed acquisition would eliminate the rivalry between Huntsman and Hexion and increase the likelihood of coordinated interaction among the remaining competitors. The Commission's consent order requires Hexion to divest its specialty epoxy business to Spolek Pro Chemickou A Hunti Vyrobu or another FTC-approved buyer.
- **Sodium Silicate.** The Commission intervened in the *proposed acquisition by Carlyle Partners IV, L.P. of INEOS Group Ltd.*, alleging that the deal would be anticompetitive in the highly concentrated Midwestern market for sodium silicate. Sodium silicates are used in detergents and other products and are important chemicals used by the pulp and paper industry. The acquisition would have joined market leader PQ Corporation, which is owned by Carlyle, with INEOS, the third-largest sodium silicate provider. Under the Commission's order, Carlyle must divest PQ's sodium silicate plant in Utica, Illinois, and transfer all associated intellectual property required to operate the plant to Oak Hill Company within five days of consummating the transaction.
- **Battery Separators.** The Commission issued an administrative complaint challenging *Polypore International Inc.'s February 2008 acquisition of Microporous Products* based on anticompetitive effects in the global market for battery separators. According to the Commission's complaint, the acquisition led to decreased competition and higher prices in North American markets in four different battery separator markets. Additionally, the Commission alleged that Polypore engaged in anticompetitive conduct by entering into a joint marketing agreement with a competitor, restricting the competitor's entry into one separator market. The Commission also charged that Polypore sought to maintain monopoly power through anticompetitive means in several battery separator markets. This proceeding is now before the Commission's Administrative Law Judge.
- **Acrylic Monomers.** The Commission issued an order requiring divestitures before *Dow Chemical Company* can proceed with its *proposed \$18.8 billion acquisition of rival chemical manufacturer Rohm & Haas Company*. The order requires Dow to sell a range of assets to an FTC-approved buyer, including its acrylic monomer, hollow sphere particle, and acrylic latex polymer businesses; chemicals used to make paints, adhesives, coated paper products; and super-absorbent polymers used in personal care and hygiene products. In the event

Global Competition Review: FTC One of Top Three Elite Agencies

The Global Competition Review named the FTC one of the top three elite competition agencies in the world, “In absolute terms, it is without question one of the world’s best enforcement agencies. With 304 non-administrative staff focused on competition, an antitrust budget equivalent to €60 million and some of the world’s foremost antitrust experts on the payroll, it is a force to be reckoned with.”

of these divestitures, Dow also must create procedures to ensure it does not have access to competitively sensitive non-public information regarding any businesses it acquires from Rohm & Haas. The Commission charged that Dow’s proposed acquisition of Rohm & Haas threatens competition in the highly concentrated North American markets for certain acrylic monomers – including glacial acrylic acid, butyl acrylate, and ethyl acrylate – as well as hollow sphere particles and acrylic latex polymers for traffic paint used to mark lines on streets and highways. The deal would have reduced the number of significant competitors from four to three, with the combined Dow/Rohm & Haas having a significant share of each market.

- **Rust Inhibitors.** To restore competition in the U.S. market for chemical rust inhibitors, the Commission required *Lubrizol Corporation to transfer the oxidate assets it acquired from rival Lockhart Company* and to eliminate a non-compete covenant that kept Lockhart from engaging in any business that competes with the assets it sold to Lubrizol. The Commission charged that Lubrizol’s 2007 acquisition of Lockhart’s oxidate assets created a monopoly in the sale of rust preventatives containing oxidates, which have become the industry standard for long-term rust and corrosion prevention. To establish a viable competitor, the Commission’s order requires Lubrizol to divest assets, including a non-exclusive license to make certain Lubrizol formulations, to Additives International.
- **Industrial Storage Tanks.** The Commission approved *Chicago Bridge & Iron’s* divestiture of certain tank business operations and contracts to Matrix Service Company, bringing to a close a merger enforcement action stemming from the company’s purchase of Pitt-Des Moines, Inc. in 2001. A Commission divestiture order required CB&I to create two separate, stand-alone divisions capable of competing in four relevant markets and to divest one of those divisions. On January 25, 2008, the U.S. Court of Appeals for the Fifth Circuit upheld the Commission’s decision and order, finding that the acquisition was anticompetitive because it significantly reduced competition in four separate markets involving the design and construction of various types of field-erected specialty and industrial storage tanks in the U.S.

D. Enforcement in Technology Sector

Competition in the high technology sector, including products such as computer hardware and software, is critical to consumers and the economy. The development of technologically complex products and processes helps drive economic expansion by lowering costs and improving our quality of life. These markets often have only a few firms capable of supplying the highly specialized goods or services. Thus mergers in technology markets pose particularly challenging questions about the potential impact on consumers and the ability of others to enter the market in the future. The Commission's merger enforcement efforts this year sought to preserve competition in high tech markets and protect existing incentives to develop new generation products or services.

In addition, the Commission has remained vigilant against conduct that seeks to distort competition in these dynamic markets and has been particularly attentive to opportunistic conduct by members of standard setting organizations that distorts competition from competing technologies far into the future. The Commission continued this year to prosecute its monopolization claims against Rambus, Inc., filing a petition for *certiorari* with the Supreme Court, which was denied.

Mergers Involving Technology Products. Acquisitions subject to merger review increasingly involve products that are made possible by advancing technology. These mergers can involve highly complex behavior and relationships among competing firms in rapidly changing, technologically advanced markets. The FTC took the following actions with respect to proposed mergers and acquisitions in this sector.

- ▶ **Unemployment Compensation and Management Services.** The Commission intervened in a series of acquisitions by *TALX Corporation*, a subsidiary of Equifax, Inc., that it charged lessened competition in the markets for outsourced unemployment compensation management (UCM) and verification of income and employment (VOIE) services. Unemployment compensation management services consist of the administration of unemployment compensation claims filed with a state or territory. Verification of income and employment services consists of providing income and employment information on behalf of employers to third parties, such as lenders or other creditors. The Commission charged that a series of acquisitions by TALX from 2002 to 2005 substantially reduced competition in the nationwide provision of VOIE services and outsourced UCM services. Under the Commission consent order, TALX has agreed to allow certain customers to terminate their agreements and to give notice before acquiring or entering a management contract with a UCM or VOIE service provider.



Commissioner Rosch

Commissioner J. Thomas Rosch believes the current financial crisis has undermined the Chicago school of economics that has so heavily influenced antitrust enforcement over the past forty years and has broad implications for the FTC's mission. Markets are not perfect; imperfect markets do not always correct themselves, and business people do not always behave rationally. Commissioner Rosch believes the Commission may need to move more towards "behavioral economics" and must provide competition law enforcement at least as strict as during times of prosperity. Lax antitrust enforcement during economic recession can result in a deepening of contraction. Competition, which spurs innovation, productivity, growth, and cost effectiveness, must be protected. Equally important is providing meaningful and consistent protection to consumers in the financial services sector and providing that leadership through a proven, existing consumer protection agency like the FTC.

- **Electronic Public Records Services.** The Commission intervened in *Reed Elsevier's \$4.1 billion proposed acquisition of ChoicePoint*, which would have combined the two leading providers of electronic public record services to U.S. law enforcement customers. Public records services compile public and non-public records about individuals and businesses, including credit data, criminal, motor vehicle, property, and employment records used by law enforcement to investigate a wide variety of crimes. The transaction, as proposed, allegedly would have removed the intense rivalry that had led to lower prices, product innovations, and improved services and support for law enforcement customers by eliminating the competition between Reed Elsevier's LexisNexis product and ChoicePoint's AutoTrackXP and CLEAR products. The Commission required divestiture of ChoicePoint's product lines to Thomson Reuters Legal Inc. The Commission worked with the Attorneys General of 18 states on this investigation.
- **Estimatics and Total Loss Valuation Systems for Auto Repairs.** The District Court for the District of Columbia issued a preliminary injunction blocking the proposed *\$1.4 billion merger of CCC Information Services Inc. and Mitchell International Inc.*, two of the three U.S. providers of "estimatics," a software system used by auto insurers and repair shops to estimate costs of repairs, and total loss valuation systems, used to value passenger vehicles that have been totaled. After a nine-day evidentiary hearing, the court found that the Commission had raised serious and substantial questions that the proposed merger would substantially lessen competition in these two markets. The parties have notified the Commission of their plan to abandon the merger.

- **Waterjet Cutting Systems.** The Commission intervened in *Flow International Corporation's proposed \$109 million acquisition of rival waterjet manufacturer OMAX Corporation.* Both companies develop, manufacture, and sell computerized waterjet cutting systems which use pressurized water mixed with abrasive garnet particles to cut various materials, including steel and stone. The Commission alleged that the proposed acquisition would have united the two largest competitors in the market for the manufacture and sale of computerized waterjet cutting systems and allowed Flow to exercise market power and increase prices. Furthermore, the Commission charged that new entry would be very unlikely because OMAX received two broad patents relating to the control systems for waterjet cutting systems. The Commission approved a consent agreement requiring OMAX to grant any request for a royalty-free license for its controller patents.

E. Consumer Goods and Services Enforcement

The Commission also focuses its enforcement resources on mergers and anticompetitive business practices that threaten competition in a wide variety of consumer goods and real estate markets because these markets have great impact on consumers every day. The Commission's merger investigations in such cases can be very time and resource intensive because they require the examination of market conditions in dozens, or sometimes hundreds, of local markets and often involve the analysis of extensive retail pricing data. This year, the Commission brought new merger enforcement actions to protect competition in markets for such products as spices, bulk fertilizer, and paving stones. In addition, it challenged a market division agreement between two golf equipment retailers and brought another case challenging the rules of a real estate Multiple Listing Service.

- **Premium Natural and Organic Supermarkets.** The Commission brought to a successful close its challenge to *Whole Foods Market, Inc.'s 2007 acquisition of Wild Oats Markets, Inc.,* through a consent order that will substantially restore competition among premium natural and organic supermarkets in 17 geographic markets impacted by the merger. Whole

Foods agreed to settle FTC charges that the acquisition violated the antitrust laws by transferring or divesting rights in 32 Wild Oats stores, along with intellectual property and related assets, to one or more Commission-approved buyers. The consent order concludes the Commission's admin-

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Whole Foods to Sell 31 Stores in FTC Deal
Whole Foods Market Inc. agreed Friday to disgorge many of the Wild Oats Markets Inc. stores it purchased in 2007, settling with the Federal Trade Commission a long-running case over the \$565 million deal.

istrative proceeding and federal court action before the U.S. District Court for the District of Columbia.

- ▶ **Vodka.** The Commission intervened in *Pernod Ricard SA's proposed \$9 billion acquisition of V&S Vin & Spirit* to preserve competition among suppliers of “super-premium” vodka. The Commission charged that the proposed deal would have merged the two leading brands, Absolut and Stolichnaya,

and would have allowed Pernod to raise prices on both brands. Additionally, the Commission contended that as a result of the proposed acquisition, markets for cognac, domestic cordials, coffee liqueur, and popular gin also would be subject to anticompetitive effects because sensitive pricing and promotion information for Beam Global Brands, a competitor in these product markets, would be available to Pernod as a result of Beam's joint venture with V&S. The Commission settled the charges by requiring Pernod to divest its distribution interests in Stolichnaya Vodka and to erect a firewall to prevent the sharing of any competitively sensitive information from Beam Global Brands with Pernod employees.

- ▶ **Spices.** The Commission intervened in *McCormick & Company's \$605 million acquisition of Lawry's and Adolph's brands of seasoned salt products from Unilever N.V.*, alleging that the transaction would be detrimental to competition in the highly concentrated U.S. market for seasoned salts. According to the Commission's complaint, the proposed deal would combine the two companies that comprise almost the entire \$100 million market for seasoned salt, increasing the likelihood that McCormick would be able unilaterally to increase prices. McCormick agreed to divest its Season-All business to Morton, an FTC-approved buyer, within 10 days of completing the acquisition.
- ▶ **Class Rings and Commemorative Products.** As a result of the Commission's investigation into potential anticompetitive effects in the market for the manufacture and sale of com-

Norman Armstrong, Jr. - BC

As Acting Deputy Director of the Bureau of Competition, Norm has overseen some of the Bureau's most important merger matters, including Whole Foods/Wild Oats, CRH/Pavestone, Dow/Rohm and Haas, and Herff Jones/American Achievement Corporation. Norm started as a staff attorney with the Bureau in 1995 and has been involved in over thirty investigations in various industries including pharmaceuticals, defense, medical devices, energy and consumer goods. In 2007, he was appointed Counsel to the Director. Shortly thereafter, he was appointed Deputy Assistant Director of the Mergers IV Division where he played an integral role in, among other things, the Inova/Prince William Hospital litigation.



memorative products, including class rings, *Herff Jones* abandoned its *proposed acquisition of American Achievement Corporation*.

- **Concrete Hardscape Products.** The Commission issued an administrative complaint to challenge *Oldcastle Architectural's proposed \$540 million acquisition of Pavestone Companies*, claiming the acquisition was likely to have anticompetitive effects in markets for drycast concrete hardscape products sold to home center retailers such as The Home Depot, Lowe's,

"We were ready to present at trial compelling evidence that the combination of Oldcastle and Pavestone would have led to higher prices and other harmful effects in the sale and manufacture of drycast concrete hardscapes used in walkways, patios, and garden walls. The parties' decision to not proceed with the transaction in the face of our court challenge is a win for those do-it-yourselfers and other consumers who buy these products for their home improvement projects."

*David Wales, Acting Director, BC
(press release, January 15, 2009)*

and Wal-Mart Stores. These products, such as concrete pavers, segmented retaining wall blocks, and concrete patio products, are used by consumers in do-it-yourself outdoor projects. The Commission charged that the acquisition would have combined the only two companies capable of competing on a national scale, giving them significant cost advantages compared to regional competitors and giving Oldcastle a 90% market share for the manufacture and sale of these drycast prod-

ucts to home centers in nearly 300 metropolitan areas in 40 states and the District of Columbia. The Commission successfully blocked the transaction when the companies abandoned their merger plans after the complaint was filed.

- **Consumer Pregnancy Tests.** The Commission eliminated the restraint on future competition allegedly created when *Inverness Medical Innovations* purchased assets related to the development of a new water-soluble dye based consumer pregnancy test from *ACON Laboratories* in order to protect its monopoly power in the market for consumer pregnancy tests. Inverness, the maker of brand name consumer pregnancy tests such as ClearBlue, Accu-Clear, and FactPlus, has 70% of sales. The Commission charged that Inverness restrained competition by: (1) preventing ACON from developing new digital consumer pregnancy tests by issuing covenants not to compete, taking profits from an ACON joint venture to develop new tests, and acquiring intellectual property rights in the technology from the joint venture; and (2) limiting product innovation by purchasing, but not using, ACON's water-soluble dye test technology. The Commission's consent order ended any restrictions Inverness had

placed on ACON's joint venture and required that Inverness divest its assets relating to the water-soluble dye technology.

- ▶ **Bulk Fertilizer Stores.** The Commission charged that *Agrium, Inc.'s \$2.65 billion proposed acquisition of UAP Holding Corporation* would substantially lessen competition in the market for the retail sale of bulk fertilizer and, in some cases, related services by farm stores, in several local markets in Michigan and Maryland. The proposed acquisition allegedly would eliminate important competition between Agrium and UAP, allowing Agrium to increase prices to fertilizer buyers. The Commission's order requires the divestiture of seven farm stores, five UAP stores in Michigan, and two Agrium locations on the eastern shore of Maryland.
- ▶ **Golf Merchandise Stores.** The Commission issued a consent order to settle concerns that *Golf Galaxy, a subsidiary of Dick's Sporting Goods Inc.*, entered into an illegal agreement with Golf Canada to allocate the market for golf merchandise in the U.S. and Canada. The agreement barred Golf Canada from opening stores in the U.S. in exchange for privileged business information from Golf Galaxy, including blueprints, merchandising plans, and sales reports. The Commission's consent order prevents Golf Galaxy from further dividing or allocating the market and rendered its 2004 non-compete agreement with Golf Canada unenforceable.
- ▶ **Multiple Listing Service Rules.** Over the past several years, the Commission has maintained an active enforcement program to challenge restrictive rules of real estate MLS organizations that impede competition from non-traditional and discount real estate professionals. This year, the Commission heard oral arguments in the staff's appeal of a December 2007 decision by an FTC administrative law judge dismissing an administrative complaint charging *Realcomp* with violating Section 5 of the FTC Act. Realcomp is an MLS operating in Southeastern Michigan that prevented information on Exclusive Agency listings and other forms of nontraditional listings from being transmitted from its multiple listing service to public real estate websites. This year, the Commission also challenged the conduct of *West Penn Multi-List*, operator of the only MLS service for the Pittsburgh metropolitan area, alleging that the restrictions on access to its MLS services were anticompetitive. West Penn, the complaint charged, limited brokers who utilized its services by requiring each broker to have a traditional full-time listing agreement with its sellers, thus restricting the use of valuable MLS services by non-traditional and discount brokers. To remedy the antitrust concerns, the Commission issued a consent order that prohibits West Penn from adopting or enforcing rules that (1) require brokers to comply with the MLS form contract and submit copies of their list-

ing contracts to the MLS, and (2) discourage brokers and home sellers from contracting for services for terms of less than a year.

- ▶ **Musical Instrument Trade Association Pricing Exchange.** The National Association of Music Merchants (NAMM) agreed to settle FTC charges that it encouraged members to

Increases in Maximum Civil Penalties

The Commission published updated maximum amounts for certain civil penalty provisions, based on changes in the Consumer Price Index, as required by the Federal Civil Penalties Inflation Act. The revisions include increased penalty amounts up to \$16,000 a day for a violation of an FTC rule or administrative order or of the premerger filing requirements of the HSR Act.

share information about prices and business strategy, which enhanced members' ability to coordinate price increases for musical instruments. The Commission alleged that NAMM, a group of 9,000 makers, distributors and dealers of musical instruments, organized meetings at which competing retailers discussed strategies for raising prices, including how to implement manufacturers' minimum advertised pricing policies. Under the Commission's order, NAMM is barred from coordinating the exchange of pricing information among competing retailers, and must implement an antitrust compliance program.

F. Other Enforcement Matters

- ▶ **Premerger Filing Violations.** The FTC administers the HSR premerger notification program for both the FTC and Department of Justice (DOJ) Antitrust Division. This program is a critical tool in the government merger enforcement program and is used to identify and investigate proposed acquisitions that may be anticompetitive. The Commission is dedicated to investigating potential violations of the HSR rules and bringing civil penalty actions when appropriate to preserve this important program. This year, the Commission filed, with DOJ authorization, a civil penalty action against two investment funds for violating the premerger reporting requirements of the HSR Act. *ESL Partners, L.P. and ZAM Holdings, L.P.* paid \$525,000 and \$275,000, respectively, to settle charges that the two had acquired voting securities in Autozone, Inc., without filing the necessary premerger notification forms. The Commission alleged that the purchases, when added to earlier purchases of Autozone, Inc. securities, met the financial thresholds for reportability under the HSR Act.
- ▶ **Subpoenae Compliance.** The Commission sought a federal court order for *Take-Two Interactive Software, Inc.* to produce documents requested by a Commission administrative subpoena and a Civil Investigative Demand issued during an investigation of the proposed acquisition of Take-Two by Electronic Arts Inc. The federal court for the District of Colum-

bia issued an order to show cause to Take-Two, and the company subsequently produced documents and witnesses on matters responsive to the initial requests.

- ▶ **Order Modification.** The Commission granted, in part, a petition from *Nine West Group, Inc.* to modify a 2000 order prohibiting the women’s footwear company from fixing retail prices with dealers. The modified order, which follows the Supreme Court’s recent decision in *Leegin Creative Products, Inc. v. PSKS, Inc.*, allows Nine West to engage in resale price maintenance (RPM) agreements with dealers and requires the company to provide periodic reports on its use of RPM agreements so the Commission can analyze the effects of such agreements on competition.

Chapter 2: Competition Policy Tools

To support its enforcement work and promote competitive outcomes in other markets, the FTC uses a wide variety of policy tools, such as rulemakings, research and reports, workshops, advocacy filings, amicus briefs, speeches, and testimony before Congress. This work helps inform the Commission and others about emerging legal and economic issues affecting competition enforcement. Through “competition R&D,” the agency invests in its resources to maintain its expertise, and shares important information with other policymakers, the antitrust bar, businesses, and the general public, thereby continuing to provide leadership on competition policy.

A. Studies and Reports

The Commission continues to address antitrust issues of national importance through conducting research and issuing reports. In the past year, Commission staff worked on a number of projects relating to health care, as well as staff working papers on evolving legal standards for single-firm conduct.

“A vital aspect of the FTC’s mission is to exercise the unique mix of institutional capabilities that Congress has entrusted to it... which include law enforcement, administrative adjudication, advocacy, the collection of data, the preparation of reports, and rulemaking.”

Federal Trade Commission at 100: Into Our 2nd Century (January 2009)

- ▶ **Hospital Merger Retrospectives.** In late 2008 and early 2009, the Bureau of Economics released three separate studies that examined the effect of consummated hospital mergers on inpatient prices. Each study used detailed insurance claims data to compare post-merger price changes for the merging parties to the price changes for a set of control group hospitals. The studies examined consummated hospital mergers in Oakland, California, Evanston, Illinois, and Wilmington, North Carolina.

- ▶ **Medicare Prescription Drug Agreements.** The Commission issued its annual summary of agreements filed with the agency in fiscal year 2007 by generic and branded drug manufacturers under the Medicare Prescription Drug, Improvement, and Modernization Act. According to the report, of the 33 final settlements filed, nearly half included both compensation to the generic company and a restriction on the generic's ability to market its product. Of those, 79% involved agreements with first-filer generic companies. Another finding in the report is that most of this year's agreements that contained restrictions on generic entry did not include a side deal involving elements not directly related to the resolution of the patent dispute. Instead, the majority involved compensation to the generic firm through an agreement by the branded firm not to sponsor or compete with an authorized generic product for some period of time.
- ▶ **Merger Investigations Data.** To promote transparency in merger enforcement, the FTC released an update of horizontal merger investigations data that describes the transactions that took place between fiscal years 1996 and 2007. The update expands the set of mergers analyzed by adding two more years to the agency's database.
- ▶ **Merger Efficiencies Paper.** The Bureau of Economics released an economic issues paper outlining the treatment of efficiencies in FTC merger matters. The study examined the 10 years following the 1997 issuance of the expanded efficiencies section in the Horizontal Merger Guidelines. The paper considers 186 mergers reviewed by the FTC, reporting on how efficiencies claims were analyzed within the agency.
- ▶ **Authorized Generics Study.** The Commission is conducting a special study on authorized generic drugs. The study is intended to help understand the circumstances under which innovator companies launch generics; to provide data and analysis regarding the effects of authorized generics on short-run price competition, particularly during the Hatch-Waxman Act's exclusivity period, and on long-term prospects for generic entry; and to add to the research on the effect of generic drug entry on prescription drug prices. In 2008, branded and generic pharmaceutical manufacturers and marketers responded to information requests specified in Commission orders. Staff is preparing a report that will present the study's findings.
- ▶ **Single-Firm Conduct and Section 2 of the Sherman Act.** Commission staff published four working papers based on discussions from the joint *FTC and DOJ Hearings on Enforcement of Section 2 of the Sherman Act*. The first paper surveys Section 2 cases during a seven-and-a-half-year period and discusses the benefits and costs of pursuing clear rules, including an analysis of the false positives/false negatives debate. The second evaluates frameworks

that have been proposed for analyzing single-firm conduct: the Microsoft rule-of-reason approach and its “disproportionality” variant; the no-economic-sense and profit-sacrifice tests; the equally-efficient-competitor test; and the impairing-rivals’-efficiency-test. A third paper examines the meaning of monopoly power and the challenges posed in defining markets in Section 2

contexts. Finally, in a paper titled *Cheap Exclusion: Role and Limits*, staff examines the legal and policy issues raised by using Section 2 to challenge deceptive conduct and other similar practices collectively known as “cheap exclusion.”

James Baker – OED

As Assistant Chief Financial Officer for Budget, James works with the Bureaus and Offices, the Chairman and Commissioners, the OMB examiners, and Congressional appropriators to ensure that the FTC’s budget needs are met and the taxpayers’ money is spent appropriately. He also helps draft the agency’s Strategic Plans, Performance Plans, and the Performance and Accountability Report (PAR), for which the agency won the Association of Government Accountants Certificate of Excellence Accountability Reporting (CEAR) Award in 2008. James received the Outstanding Team Award in 2003; the Richard C. Foster Award in 2007, the Janet D. Steiger Award in 2008.



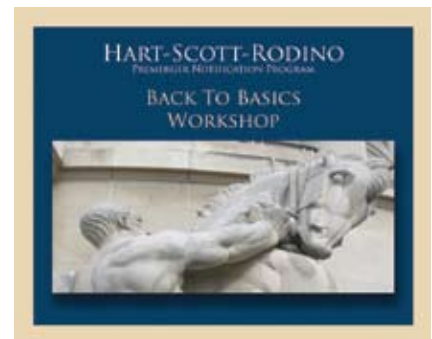
B. Hearings, Workshops, and Conferences

The Commission organizes public hearings, workshops, and conferences to gain a deeper understanding of the complex economic and legal issues surrounding various antitrust issues and to help it develop effective policy research and development tools. These events generally bring together experts from various legal, business, academic, and government backgrounds to exchange ideas, challenge positions, and reflect on new issues to study.

- **The Evolving IP Marketplace.** The FTC is hosting a series of workshops to explore the evolving market for intellectual property (IP). To date, there have been three hearings to examine changes in IP law, patent-related business models, and new learning about the operation of the IP marketplace since the issuance in October 2003 of the Commission report *To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy*. The first hearing consisted of three panels that addressed different issues related to the evolving IP marketplace including business models, proposed changes in remedies law, and application of legal doctrine to the value and licensing of patents. The second focused on damages in patent cases, and the third discussed recent changes in permanent injunction and willful

standards in the wake of the *eBay* and *Seagate* decisions. Additional workshops will be held in 2009.

- ▶ **Emerging Health Care Competition and Consumer Issues.** The FTC held two roundtables on emerging health care competition and consumer issues. The first focused on the competitive significance of health care quality information. The second roundtable featured a discussion of competition that could be provided by developing an abbreviated regulatory approval pathway for follow-on generic biologic drugs. The Commission issued a *Federal Register* notice requesting public comments on both events.
- ▶ **Clinical Integration in Health Care: A Check-Up.** The Commission hosted a public workshop to discuss developments in “clinical integration,” a type of collaboration among health care providers that may improve quality and contain cost.
- ▶ **Innovations in Health Care Delivery.** In a one-day public workshop, the Commission examined the competition and consumer issues raised by recent health care delivery trends. In particular, workshop participants discussed: (1) limited service clinics, also called retail health facilities or retail clinics; (2) price and quality transparency; and (3) health information technology.
- ▶ **Hart-Scott-Rodino Workshop.** In recognition of the 30th Anniversary of the implementation of the HSR Antitrust Improvements Act, the Commission held a workshop on the basics of HSR premerger notification, covering such topics as how to determine whether premerger notification is required and how to prepare an HSR filing. Experts on HSR Rules provided answers to common questions and discussed hypothetical transactions to illustrate common filing scenarios. The session was attended by lawyers who are new to the process of completing premerger notification forms; a webcast of the training session can be viewed on the workshop webpage.
- ▶ **Section 5 as a Competition Statute.** The FTC held a public workshop to explore the full scope of the prohibition against unfair methods of competition outlined in Section 5 of the FTC Act. The workshop focused on three subject areas: (1) the history of Section 5, including enactment, FTC enforcement, and the reaction of various courts; (2) the range of possible interpretations of Section 5; and (3) examples of business conduct that may be unfair methods of competition under Section 5.



➤ **Resale Price Maintenance.**

The FTC is hosting a series of public workshops on RPM to examine, for the purposes of enforcing Section 1 of the Sherman Act and Section 5 of the FTC Act, how best to distinguish between uses of RPM that benefit consumers and those that do not. The first two sessions, held in February, focused on theories of economic benefits and harms of RPM. Additional RPM workshops will be held in 2009.

Christopher Grengs – OPP



As an Attorney Advisor in the Office of Policy Planning, Chris works with staff across the Commission coordinating research and advocacy efforts on a wide variety of complex legal and economic policy issues. As a member of the FTC's Internet Access Task Force, he has been a substantial contributor to staff reports on the Municipal Provision of Wireless Internet and Broadband Connectivity Competition Policy. Notably, Chris also worked on recent staff comments before the Federal Reserve on mortgage lending and the Department of Housing and Urban Development on mortgage disclosure reform, as well as staff's *Noerr-Pennington* report.

C. Advocacy Letters and Comments

Providing policymakers with a framework to analyze competition issues is an important component of the Commission's mission to promote competition for the benefit of consumers. Government imposed impediments can be among the most durable and effective restraints on competition. Thus, in response to requests, the FTC advises state and federal entities on the potential competitive impact of pending governmental actions that may have a major impact on consumers' wallets.

- **Limited Service Clinics.** The Commission staff provided comments on proposed Illinois legislation to establish regulatory requirements for LSCs, sometimes referred to as retail health care facilities or retail clinics. The letter noted such facilities may expand access to health care and recommended that ambiguous, potentially anticompetitive provisions be clarified. Further, the letter suggested that certain other provisions that appeared unduly burdensome to certain competitors be struck or, alternatively, narrowly tailored to meet documented policy needs if there were evidence of health or safety risks associated with retail clinic practice.
- **Certificate of Need.** The Commission submitted written testimony to the Florida Senate on a bill that would eliminate certificate of need (CON) requirements for several categories of health providers. The testimony supported the bill's effort to reduce the scope of the Florida CON regime and noted such laws can be a barrier to entry. Also in 2008, a joint FTC/

DOJ statement to the Illinois Task Force on Health Planning Reform stated that CON laws generally undercut consumer choice, stifle innovation, and weaken markets' ability to contain health care costs.

- ▶ **State Energy Comments.** The FTC commented on the Pennsylvania Public Utility Commission's proposed Energy Efficiency and Conservation Program for electric power companies. The FTC recommended that the PUC: (1) encourage real-time or other dynamic pricing programs that increase economic efficiency; (2) urge utilities to design and market dynamic pricing programs that appeal to customers; (3) eliminate regulatory provisions that financially penalize power suppliers if they facilitate efficient dynamic pricing; (4) offer fair standby pricing policies for customers with onsite generation investments; and (5) advocate for demand response bid flexibility. The Commission also submitted comments to the Arizona Corporation Commission (ACC) on similar issues concerning retail electricity competition. The comment, which referenced the FTC's comments to the Pennsylvania PUC, encouraged the ACC to consider the recommendations of the five-agency report to Congress (to which the Commission contributed) on electric market competition and to examine dynamic pricing as a means to address a wide array of electric system problems.
- ▶ **Federal Energy Comments.** The Commission submitted two separate comments to the Federal Energy Regulatory Commission (FERC), one concerning that agency's proceeding to set standards of conduct for transmission providers, and the other concerning proposals to strengthen competition in organized electric power markets. The FTC encouraged FERC to consider structural alternatives to the behavioral approach on which FERC has relied. The FTC also encouraged FERC to facilitate improvements in pricing and direct load control – collectively known as “demand response.” The Commission stated, “a focus on removal of regulatory obstacles to efficient real-time price signals and demand response at the federal and state levels can be an important step toward appropriate, efficient reliance on conventional price mechanisms to handle scarcity and guide investment.”
- ▶ **Taxi/Land Transportation Permits.** The FTC staff provided comments to the Colorado Public Utilities Commission concerning a revised application process to provide taxi service. In situations where an applicant initially demonstrates its operational and financial fitness, the comments conclude new entry is highly unlikely to harm the public interest and, in some instances, has generated consumer benefits in the form of lower prices and improved service. The FTC staff noted that although special issues have sometimes arisen following regulatory reform, as in the case of taxicab stands at airports, they do not provide an argument against new entry, generally.

- **LaGuardia Congestion Management.** In comments to the Federal Aviation Administration (FAA), the FTC staff supported a proposed congestion management rule for LaGuardia Airport, under which the FAA would auction a limited number of landing and take-off slots for a 10-year ownership period. The Commission staff argued that slot auctions could help relieve airport congestion and efficiently allocate scarce airport capacity and urged the FAA to consider other market-based solutions, such as congestion pricing.
- **Unauthorized Practice of Law.** The FTC and DOJ filed joint comments with the South Carolina Supreme Court, advising that certain proposed guidelines for residential and commercial real estate closings be modified to foster competition between non-attorneys and attorneys.

D. Rulemaking

- **Rulemaking on Manipulation in Oil and Gasoline Industry.** Rising energy prices gripped the nation last summer, and the Commission tasked attorneys, economists, and other staff throughout the agency to assess the need for a Commission rule to address price manipulation in petroleum markets. In May, the Commission issued an Advance Notice of Proposed Rulemaking and elicited the views of a wide spectrum of consumer groups, businesses, academic experts, and other informed sources on the issue of how to define and prosecute market manipulation. In August, the Commission issued a Notice of Proposed Rulemaking with the text of a proposed rule, inviting further public comment on the specifics of the proposal. The Commission then held a public workshop, featuring more than 20 panelists representing diverse interests and views. The Commission is currently considering these views.

E. Congressional Testimony

- **Small Business Competition Policy.** In September 2008, the Commission presented testimony before the U.S. House Committee on Small Business titled *Small Business Competition Policy: Are Markets Open for Entrepreneurs?* The testimony emphasized that while the FTC does not prefer large firms or small ones, small businesses benefit from the Commission's goal of ensuring an open and honest marketplace where all businesses can compete for the consumer dollar.

"A successful competitive economy requires open markets – markets that are open to new ideas, and to succeeding waves of innovation and entrepreneurs that will challenge old ideas and outdated ways of doing things. Small businesses can be an important vehicle for these competitive forces, but only if the antitrust laws protect, and require, open markets and competition for all."

Then Chairman Kovacic, Testimony before the House Committee on Small Business, September 25, 2008.

Chapter 3: Competition Education and Outreach

To fulfill its competition mission, the Commission uses education and outreach to help prevent consumer injury, increase business compliance with the antitrust laws, and augment its law enforcement efforts. Through its outreach efforts, the Commission provides transparency and answers questions about the agency's competition mission. The Commission targets its message to particular audiences to help explain the antitrust laws and its work. Resources are available in print and online for use by consumers, businesses, attorneys, federal, state, and local agencies.

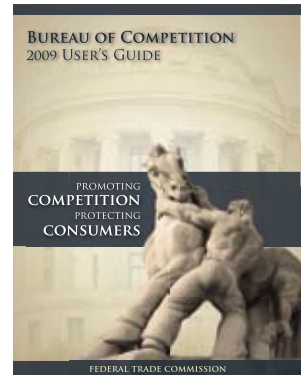


➤ **FTC Guide to the Antitrust Laws.** The Commission introduced a new resource to answer general questions about the antitrust laws.

The *Guide to the Antitrust Laws* is a web-based resource, with links to

statutes, competition notification and enforcement actions, and other guidance materials available from the Commission, such as the Horizontal Merger Guidelines, Guidelines for Collaborations Among Competitors, and other policy statements. The *Guide* contains downloadable Fact Sheets on Dealings Among Competitors, Dealings in the Supply Chain, Single Firm Conduct, and Mergers, with case examples and answers to Frequently Asked Questions. The *Guide* is available on the agency's website at ftc.gov/bc/antitrust/.

➤ **Bureau of Competition User's Guide.** The User's Guide describes the work of the Bureau of Competition and who to contact about competition issues. The User's Guide contains information about the Offices and Divisions of the Bureau of Competition, describes the type of investigations conducted by each shop, and includes contact information for managers and staff. The User's Guide, updated annually, is available in print and online.



➤ **YouAreHere Website.** The FTC's new website for kids and teens contains lessons and information about how all consumers benefit from competition among businesses at our virtual mall. In the food court, kids can learn about the benefits of price and non-price competition among pizza vendors, and how a merger between ice cream vendors can affect prices and variety.



➤ **Website Improvements.** The FTC continues to improve the competition resources available on the FTC’s website. This year, the Commission revamped its HSR webpages to provide easy access to the resources most used by HSR practitioners. The site also includes new tip sheets to answer basic questions about the HSR statute and rules. In October, in recognition of the 30th anniversary of the implementation of the HSR premerger notification program, the staff of the Premerger Notification Office held a *Back to Basics* workshop. Staff helps HSR practitioners comply with HSR notification requirements; each year they respond to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and Report Form.



➤ **FTC Competition Enforcement Actions Database.** This spring, the Commission will introduce a web-based resource that catalogs its competition enforcement actions by the type of violation (merger/nonmerger), action (consent order, injunction, or administrative complaint), sector, and date. Users will be able to view short descriptions of each action, with click-through access to related documents, such as press releases and case filings.



Section Two: Consumer Protection Mission



This bas relief, designed by Chaim Gross, is one of a series of four over door stone panels on the Federal Trade Commission building, known collectively as *Americans at Work, Past and Present*. The work was commissioned by the Treasury Department's Section of Painting and Sculpture; each sculptor was asked to select a subject suggesting the nation's enterprise. Gross chose *Industry*, as illustrated by the steelworkers he saw laboring day and night in New York City. The other bas reliefs included *Shipping* by Robert Laurent, *Agriculture* by Concetta Scaravaglione, and *Foreign Trade* by Carl Schmitz. Initially, Gross submitted two sketches of welders for the panel. In response, the Section of Painting and Sculpture suggested he consider depicting a riveter and his assistant.

Text drawn from General Services Administration website



Section Two: Consumer Protection Mission

The FTC works to protect consumers from fraudulent, deceptive, and unfair practices in the marketplace. During the past year, enforcement efforts have targeted problems in the rapidly changing financial markets, including deceptive practices in the subprime lending and mortgage servicing markets; fraudulent claims by mortgage foreclosure rescue and credit repair operations; and illegal discriminatory lending practices. The Commission has also continued vigorous efforts to combat deceptive claims about health care products, telemarketing fraud in its various forms, illegal payment processing systems, fraud in the sale of business opportunities, and fraud perpetrated against small businesses.

In addition, consumer privacy and the protection of consumer data remain a significant focus of the Commission's ongoing efforts. Enforcement actions have targeted various deceptive or unfair data security practices.

The Commission also recognizes the importance of ensuring that there is accurate information in the marketplace with respect to energy consumption and the environmental impact of various products and services. Therefore, the FTC has embarked on a major "green marketing" initiative to address this area – a project that combines law enforcement with studies, workshops, rulemaking proceedings, and consumer and business education.

In these and other areas, enforcement actions remain the primary focus of the consumer protection mission. However, the Commission also employs a variety of other tools – rulemaking, consumer education and business guidance, research and reports, public hearings and workshops, and the encouragement of self-regulatory initiatives. These efforts combine to inform policymakers, the business community, and consumers in ways that are vital to the success of the mission.

Chapter 4: Consumer Protection Law Enforcement

A. Fraud, Deception, and Unfair Practices

Combating fraud, deception, and unfair practices in the marketplace is one of the FTC's highest priorities. From March 2008 through February 2009, the FTC filed 64 actions in federal district court and obtained 83 judgments and orders requiring defendants to pay more than \$371.2 million in consumer redress or disgorgement of ill-gotten gains. In addition, cases referred to DOJ resulted

in 15 civil penalty orders and \$9.6 million in assessed civil penalties, of which nearly \$8.3 million has been collected. Furthermore, the FTC approved the issuance of 18 administrative orders. In many of its cases, the FTC worked closely with other law enforcement authorities – local, state, federal, and foreign – to achieve the best results for consumers.

Consumer Credit and Related Financial Services. In the current economy, with tightened restrictions on access to capital, the costs and availability of credit are more important than ever to cash-strapped consumers. The FTC's role – to protect consumers from unfair and deceptive credit schemes and ensure that they get the information needed to make informed choices about the use of credit – remains paramount. Therefore, the FTC continues to be active in the areas of subprime credit, payday lending, fair lending, mortgage advertising and servicing, and debt collection and settlement.

- **Subprime Credit.** The Commission has acted to protect consumers from deceptive practices in the subprime credit card market. A settlement agreement with *CompuCredit Corporation* requires the company to reverse fees charged to eligible accounts, thus providing consumers an estimated \$114 million in credits and cash refunds. The Commission's complaint alleged that CompuCredit had violated the FTC Act by deceptively marketing credit cards, primarily through mail solicitations that misrepresented the amount of credit available to consumers and also failed to disclose important information about the cost of that credit. The FTC closely coordinated its action with related lawsuits filed by the Federal Deposit Insurance Corporation.
- **Mortgage Servicing.** The Commission announced settlement of the most recent of 23 actions filed during the past decade alleging deceptive or unfair practices by mortgage brokers, lenders, and servicers. Bear Stearns Companies, LLC and its subsidiary, *EMC Mortgage Corporation*, agreed to pay \$28 million to settle charges that they engaged in unlawful practices in servicing home mortgage loans, many of which were subprime loans. The FTC's complaint alleged that Bear Stearns and EMC misrepresented the amounts borrowers owed, charged unauthorized fees, and engaged in unlawful and abusive collection practices. In addition to paying \$28 million in redress to injured consumers, the companies must cease the challenged conduct and institute a data integrity program to ensure the accuracy and completeness of consumer loan information.
- **Foreclosure Rescue.** With the recent rapid increase in mortgage delinquencies and foreclosures, the FTC has intensified its efforts to protect consumers from mortgage foreclosure rescue scams. The Commission filed six law enforcement actions against defendants allegedly engaged in foreclosure rescue fraud, *Safe Harbour Foundation of Florida, Inc.*, *Mortgage*

Foreclosure Solutions, Inc., Foreclosure Solutions, LLC, National Financial Solutions, LLC, United Home Savers, and National Foreclosure Relief, Inc. These companies and their principals were charged with falsely representing that they will stop foreclosure in all or nearly all instances, and, in some cases, that they will refund most or all of the fees where foreclosure cannot be stopped.

Consent judgments have

been entered in two of the cases. In addition, the Commission has formed or joined seven task forces in cities with high foreclosure rates – Tampa, Atlanta, Cleveland, Detroit, Chicago, Los Angeles, and San Francisco – in order to coordinate its efforts with those of state and local enforcement agencies.

- ▶ **Fair Lending.** In its first action charging lender discrimination in mortgage pricing, the Commission obtained an order against *Gateway Funding Diversified Mortgage Services, L.P. and Gateway Funding, Inc.* settling charges that the companies violated the Equal Credit Opportunity Act in pricing both prime and subprime mortgage loans. The complaint alleged that Gateway gave loan officers discretion to charge, in addition to a risk-based price, “overages” that included higher interest rates and higher up-front charges, resulting in higher prices for African-American and Hispanic borrowers because of their race or ethnicity. The settlement bars the defendants from engaging in discriminatory lending practices and requires them to implement a fair lending training program, as well as a monitoring program to analyze disparities in loan prices. The settlement also imposed a \$2.9 million judgment, with all but \$200,000 suspended based on defendants’ inability to pay.
- ▶ **Mortgage Advertising.** Continuing its efforts to eliminate deception in home mortgage advertising, the FTC settled actions against three mortgage lenders, *American Nationwide Mortgage Co., Michael Gendrolis, d/b/a Good Life Funding,* and *Shiva Venture Group, Inc., d/b/a Innova Financial Group,* for ads touting low interest rates and low monthly payments,

Jan Charter - WRSF

An FTC attorney since 1985, Jan has recently applied her energy, tenacity, and skills as a litigator to the Commission’s efforts to combat scams that target consumers who are facing mortgage foreclosure. For example, she led the successful litigation team on one of the FTC’s first cases in this area, National Hometeam Solutions. Jan has worked tirelessly with other federal, state, and local agencies to protect vulnerable consumers during this period of economic distress and also helped to draft timely consumer education materials. Jan’s talents are evident in other assignments. During 2008, Jan spent five months with consumer protection and antitrust officials in Peru and Colombia, advising them on an array of issues.



but not disclosing key, required loan terms. The companies were charged with violating the FTC Act by failing to disclose adequately that the low rates and payment amounts would increase after a limited period of time. The Commission also charged the advertisers with violating the Truth in Lending Act (TILA), and its implementing Regulation Z, by failing to disclose repayment terms and the annual percentage rate (APR) in ads stating periodic payment amounts. The consent orders bar the companies from advertising a rate lower than the rate at which interest actually accrues and listing a monthly payment amount without disclosing the time period for which that amount applies.

- ▶ **Debt Collection.** The Commission obtained its largest civil penalty in a debt collection case. *Academy Collection Service, Inc.* and its owner agreed to pay \$2.25 million to settle charges that Academy and its collectors violated the FTC Act and the Fair Debt Collection Practices Act (FDCPA) by misleading, threatening, and harassing consumers; disclosing their debts to third parties; and depositing postdated checks early. The Commission's agreement with CompuCredit also settled charges that its debt collection subsidiary, *Jefferson Capital Systems, LLC*, violated the FTC Act by misrepresenting when credit would be available on a credit card promised as part of a debt repayment plan, and violated the FDCPA by engaging in abusive collection practices, such as calling individual consumers more than 20 times a day. Jefferson Capital is prohibited from engaging in such deceptive or abusive practices in the future.

"Thank you very much for being there for consumers . . . we need organizations like you to protect people from the crooks. I really appreciate your services!!"

Consumer in Virginia

- ▶ **Payday Lending.** The Commission actively seeks to ensure that consumers receive the information they need to understand the substantial costs of payday loans. Two payday loan lead generators, *We Give Loans, Inc.* and *Aliyah Associates, LLC, d/b/a American Advance*, settled FTC charges that their Internet advertising stated payday loan costs and repayment periods without disclosing required APR information. The administrative consent orders prohibit the companies from advertising certain credit offers without also providing key, required disclosures, such as the APR. Additionally, the FTC and the State of Nevada together filed a federal court action against 10 related Internet payday lenders and their principals, based in both the U.S. and the United Kingdom. *Cash Today, Ltd.* and other entities were charged with violating the TILA and Regulation Z by failing to provide U.S. consumers with key

loan terms in writing before consummating their loans. The defendants also were charged with violating the FTC Act by using unfair and deceptive collection tactics, including falsely threatening consumers with arrest or imprisonment. Pending trial, the Nevada district court entered a preliminary injunction against the defendants based in the U.S.

- ▶ **Operation Clean Sweep.** The FTC and 24 state agencies targeted 36 credit repair operations, charging that they deceptively claimed they could remove accurate and timely negative information from consumers' credit reports. In 10 FTC actions, most of which are currently in litigation, the defendants were sued in federal district courts, pursuant to the FTC Act and the Credit Repair Organizations Act. The 24 state agency actions included lawsuits filed in state or federal court, issuance of cease and desist orders, and initiation of public investigations.

Deceptive Health, Safety, and Weight Loss Claims. Many consumers fall victim to deceptive health marketing because they are desperate for help – whether to lose weight, prevent or treat colds, or cure very serious diseases, such as cancer or diabetes. Between March 2008 and February 2009, the Commission initiated or resolved 25 law enforcement actions challenging false or deceptive claims for a variety of products, many of them promoted as treatments for cancer or other serious diseases.

- ▶ **Operation “False Cures” Cancer Sweep.** The FTC announced actions charging 11 companies or individuals with making false or unsubstantiated claims that their products – including laetrile, black salve (a corrosive ointment), essiac tea and other herbal mixtures, coral calcium, and shark cartilage – cure or treat cancer. Some complaints also alleged that companies falsely touted clinical or scientific proof for their products. Six of the 11 actions have been resolved through settlements that bar future false or unsubstantiated claims and require notification to purchasers that little or no scientific evidence exists to demonstrate product effectiveness in treating or curing cancer. The letters to consumers urged consultation with their doctors about these products. Four of the settlements also required a monetary payment. A default judgment was entered in another matter, and the remaining four cases are in litigation before an administrative law judge. The cancer cure cases were the result of an Internet surf coordinated among the FTC, the U.S. Food and Drug Administration (FDA), and the Canadian Competition Bureau.
- ▶ **Cold and Flu Products.** As part of a broader investigation into dietary supplements purported to prevent or treat colds or flu, the Commission settled charges that *Airborne Health, Inc.* disseminated false and unsubstantiated claims that Airborne Effervescent Health Supplement prevents or treats colds, protects against exposure to germs in crowded environments,

and is a clinically proven cold remedy. The settlement included payment of at least \$23.25 million, and possibly up to \$30 million, for consumer redress, to be administered through the redress program for a private class action previously settled in 2007.

- ▶ **Diabetes Prevention and Treatment.** The FTC resolved charges against *Glucorell, Inc.*, *Anafit, Inc.*, and their officers for promoting two products, Insulow and Glucorell R, as effective for preventing and treating diabetes. The Stipulated Order contains an injunction and a judgment, suspended based on inability to pay, for \$493,543, the total amount of sales for the two products.
- ▶ **Weight Loss Supplements.** A federal district judge imposed monetary judgments of more than \$15.8 million and issued permanent injunctions against marketers of three dietary supplements. *National Urological Group, Inc.*, *Hi-Tech Pharmaceuticals, Inc.*, and other corporate and individual defendants were found liable for deceptive sales of purported weight loss products Thermalean and Lipodreme, as well as Spontane-ES, a purported treatment for erectile dysfunction. The court also held the companies' medical expert liable for \$15,454 for his deceptive endorsement of Thermalean.
- ▶ **Ab Belts.** In 2003, the FTC filed an administrative complaint alleging that *Telebrands Corporation* and its principal, Ajit Khubani, made unsubstantiated claims that their Ab Force belt causes loss of weight, inches, or fat; creates well-defined abdominal muscles; and affords an effective alternative to conventional exercise. In 2005, the Commission upheld an administrative law judge's ruling that the ads were false and deceptive, and in 2006, the U.S. Court of Appeals for the 4th Circuit affirmed that decision. Pursuant to Section 19 of the FTC Act, the Commission then filed a federal court action seeking redress for consumers. The defendants have paid \$7 million to settle the redress claim.

Telemarketing Fraud. The Commission continues its aggressive efforts to combat telemarketing fraud. A number of significant actions were filed or resolved during the past year.

- ▶ **Operation Tele-PHONEY.** In the largest sweep ever led by the FTC to target telemarketing fraud, more than 180 cases were filed by the Commission and law enforcement partners, including more than 30 federal, state, and local enforcement agencies, as well as Canadian authorities at both the national and provincial level. The cases are both civil and criminal, alleging fraudulent schemes that harmed thousands of consumers and resulted in losses of millions of dollars. The Commission was responsible for 13 of these cases, which involved alleged fraudulent representations regarding medical or prescription discount plans marketed to the elderly; advance fee loans or credit cards; overpriced household goods supposedly tied to charitable causes; magazine subscriptions; and offers of grants, tax refunds, free gift cards,

or merchandise in exchange for consumer bank account information. One of these cases, *Handicapped & Disabled Workshops, Inc.*, resulted in a \$13.4 million judgment, much of it suspended based on inability to pay, against defendants alleged to have falsely represented to elderly consumers that the purchase of overpriced light bulbs and garbage bags would benefit handicapped and disabled people.

Debbie Matties – BCP



Debbie was the Division of Marketing Practices' lead attorney in the Qchex.com (Neovi) litigation, targeting an online check creation and delivery service that operated without any safeguards to prevent fraud. Debbie conceived, planned, supervised, and took an active part in every aspect of this litigation, successfully arguing the motion for summary judgment. Debbie's hard work, her toughness, and her level-headed good judgment, planning, and litigation skill resulted in an important district court decision that adds significantly to the Commission's unfairness authority under Section 5. Debbie has just accepted a position as Attorney Advisor to Chairman Leibowitz and will concentrate on consumer protection issues.

- ▶ **Suntasia Marketing, Inc.** Fourteen defendants in this massive telemarketing scheme have agreed to pay more than \$16 million to settle FTC charges that they deceptively marketed a series of negative option programs, including discount buying and travel clubs. The Commission had alleged that consumers were offered free trial memberships, then deceived into disclosing bank account information that was used to make unauthorized debits from their accounts. A settlement between the Office of the Comptroller of the Currency and Wachovia Bank, which allegedly processed thousands of unauthorized demand drafts on behalf of Suntasia, will provide an additional \$33 million to Suntasia victims.

Payment Systems. The

Commission pursued actions against various kinds of operations for extracting money from consumers' accounts without authorization or padding otherwise legitimate bills.

- ▶ **Neovi, Inc.-Qchex.com.** The FTC won summary judgment against a company offering online check creation services that provided fraud

"The evidence shows that the launch of Qchex.com was a 'dinner bell' for fraudsters and resulted in a high number of accounts frozen for fraud . . . Defendants' own records show that their failure to employ and maintain adequate verification procedures, over approximately six years, led to substantial losses for consumers that had unauthorized checks drawn on their bank accounts."

*Judge Janis L. Sammartino,
FTC v. Neovi, Inc., d/b/a Neovi Data Corp. and Qchex.com,
Case No. 06CV1952 (S.D. Cal. Sept. 16, 2008), Order Granting
Plaintiff's Motion for Summary Judgment.*

operators the means to take money from unwitting consumers' bank accounts. The company was required to disgorge more than \$535,000 in revenue from the check creation operation and ordered to take specific future steps to verify customer identities and authority over accounts for which they order checks.

- ***Nationwide Connections.*** The Commission obtained orders prohibiting the cramming of unauthorized charges onto telephone bills by the owners and officers of three companies that allegedly had billed more than \$30 million in bogus collect charges to millions of consumers. As a result of the FTC's lawsuit, the court also permanently banned one of the individual defendants from all billing on local telephone bills.
- ***Global Marketing Group.*** A district court granted summary judgment against an individual and entered default judgments against 22 corporations that ran an international payment-processing operation. The defendants illegally debited millions of dollars from consumers' bank accounts on behalf of Canadian telemarketers selling non-existent credit cards to U.S. consumers. The final court order imposes an \$8.6 million judgment and permanently bars the defendants from engaging in telemarketing and payment processing activities.

Fraud Against Small Businesses. The perpetrators of fraud frequently target small businesses. The Commission brought actions against several such operations.

- ***WebSource Media, LLC.*** The defendant was ordered to pay \$4.1 million and halt the illegal practice of cramming unauthorized charges, for unordered Website services, onto the telephone bills of small businesses and non-profit organizations.
- ***Merchant Processing, Inc.*** The FTC charged marketers of a debit and credit card processing services operation with false promises that they could save merchants hundreds or thousands of dollars in credit card processing fees. The defendants agreed to a judgment of more than \$26 million.
- ***Datacom Marketing Inc.*** A federal court ordered two individuals to pay more than \$49 million for their role in a Canada-based operation that deceived U.S. businesses into paying for business directories and listings they did not order. The FTC brought the case with the assistance of several Canadian law enforcement authorities.

Business Opportunity Schemes. The Commission charged *Westbrook Marketing Associates, LLC*, *Richard Guadagno*, and affiliated entities with violating the FTC Act and the Franchise Rule by misrepresenting potential profits and earnings in their sale of vending machine business opportunities. The court entered summary judgment against most of the defendants and ordered them to pay more than \$4 million. The Commission also filed a federal court complaint against

BurnLounge, Inc. and several of its principals, alleging a pyramid scheme that involved misrepresentations to recruit others into selling online digital music. One defendant entered a settlement that contained an injunction and a judgment of nearly \$118,000, much of it suspended based on inability to pay. Litigation against other defendants is ongoing. In another matter, *Davison Design and Development, Inc.*, the owners of an invention promotion operation agreed to pay \$10 million in consumer redress to settle FTC charges that they deceived consumers who paid up to \$12,000 for misrepresented invention promotion services.

Significant Redress Orders

CompuCredit Corporation	\$114,000,000
Datacom Marketing Inc.	\$49,235,402
Kevin Trudeau	\$37,616,161
EMC Mortgage Corporation	\$28,000,000
Merchant Processing, Inc.	\$26,480,041
Suntasia Marketing, Inc.	\$16,406,335
National Urological Group, Inc.	\$15,897,890
Handicapped & Disabled Workshops, Inc.	\$13,477,029
Davison Design and Development, Inc.	\$10,080,285
Global Marketing Group	\$8,615,185
Telebrands	\$7,000,000
QVC, Inc.*	\$6,000,000

* In addition to \$1.5 million in civil penalties.

Hispanic Law Enforcement Initiative. The FTC continues aggressively to combat consumer fraud against Hispanics. Since the introduction of the Hispanic Law Enforcement Initiative in 2004, the FTC has filed 47 actions against 163 businesses and individuals alleged to have fraudulently sold a variety of products and services to Spanish-speaking consumers. Examples of such actions this year include:

- **Prepaid Phone Card Initiative.** The Commission filed complaints in federal court against two sellers of prepaid telephone calling cards, *Clifton Telecard Alliance* and *Alternatel, Inc.*, alleging misrepresentation of the actual number of minutes purchasers could use and failure to disclose other material terms. Both companies marketed to Hispanic consumers placing calls to Latin America. To settle the charges, Alternatel has agreed to pay \$2.25 million and to be bound by an injunction that prohibits future misrepresentations and requires disclosure of all fees.
- **International Marketing.** The FTC filed suit against the marketer of a work-at-home scheme that promised Spanish-speaking consumers earnings of up to \$1500 a week for stuffing envelopes. The court found that the defendant's earnings claims were false and entered a default judgment holding him liable for monetary relief to compensate consumers who purchased the envelope-stuffing opportunity.

- **Enterprise Who's Who.** The FTC obtained preliminary relief from a federal court to stop a Canadian operation from billing businesses in the continental U.S. and Puerto Rico for unordered directory listings. The Commission alleged that the defendants, posing as the local telephone company, called businesses to verify contact information and then billed those businesses for Internet directory listings. Many of the calls were conducted in Spanish.

Order Enforcement. The FTC's enhanced order enforcement program continues to aggressively monitor compliance with administrative and federal court orders entered in consumer protection cases. These enforcement efforts aim to identify violators quickly in order to limit consumer harm, to obtain compensation for injured consumers, and to modify orders when necessary to provide additional protection for consumers. Particularly egregious violators are also referred for criminal prosecution.

- **Trudeau.** Last November, a district court affirmed its 2007 civil contempt finding against Kevin Trudeau. The Court found that Trudeau misrepresented the content of his book, *The Weight Loss Cure "They" Don't Want You To Know About*, by claiming in infomercials that the weight loss protocol in the book was "easy" and ultimately enabled consumers to eat "everything" without gaining weight. In fact, the protocol contains hundreds of strict mandates, as well as life-long dietary restrictions. The Court entered a \$37.6 million judgment against Trudeau to compensate consumers harmed by his infomercials and banned him for three years from disseminating infomercials for books in which he has an interest.

" . . . Mr. Trudeau has made abundantly clear that nothing short of a complete ban . . . will achieve compliance with the court's previous directives to limit the content of his infomercials to non-misleading claims about his books."

*Judge Robert W. Gettleman,
FTC v. Kevin Trudeau, Case No. 03 C 3904
(N.D. Ill. Aug. 7, 2008), Memorandum Opinion and Order.*

- **QVC.** On behalf of the Commission, DOJ previously had filed suit against home shopping channel QVC, charging that it violated a 2000 Commission order by making unsubstantiated claims for various dietary supplements. These supplements included weight loss products and Bee-Alive, made with a substance secreted by bees and allegedly promoted to reduce fatigue and increase energy in users who have had surgery or suffer from illnesses such as fibromyalgia, Lupus, and Epstein Barr virus. The complaint further alleged that QVC violated Section 5 of the FTC Act by making unsubstantiated claims for an anti-cellulite cream.

QVC settled the charges by agreeing to pay the Commission \$6 million, which may be used for consumer redress, and an additional \$1.5 million in civil penalties.

- ▶ **Timothy Jackson.** The FTC initiated a civil contempt action against Jackson for violating a 2001 federal court order by falsely promising consumers that they could easily obtain government grants for personal uses such as home repair and payment of medical bills. The FTC is seeking nearly \$8 million for harmed consumers.
- ▶ **Walter Rines and Sanford Wallace.** The Commission obtained a contempt finding against Rines and Wallace for violating a 2006 Order by phishing for consumers' personal information on the social networking site, MySpace. The court also found Rines in contempt for failing to obtain a required bond. The court ordered both contempt defendants to disgorge more than \$500,000.
- ▶ **Express Consolidation.** The FTC initiated a civil contempt action against Express and its officers for violating a 2008 order by entering into debt consolidation contracts with consumers in states where the defendants were not authorized to conduct such business. The FTC seeks to return to consumers the fees they paid in connection with these illegal contracts.

Criminal Liaison Unit. The FTC created its Criminal Liaison Unit (CLU) six years ago to spur an increase in consumer fraud prosecutions through systematic coordination between the FTC and criminal law enforcement authorities. From March 2008 through February 2009, federal and state criminal authorities have charged 38 FTC defendants and their associates with crimes arising from acts investigated or prosecuted by the Commission. During this period, 41 such defendants and their associates were convicted or pled guilty. Sentences imposed totaled more than 296 years in prison, including five sentences of 20 to 29 years and one 50 year sentence.

- ▶ **Kimoto.** In 2003, the FTC obtained a \$106 million judgment and stringent injunctive relief against Kyle Kimoto for his role in a massive international, advance-fee credit card scam. Given the magnitude and nature of Kimoto's fraud, CLU referred the matter to, and worked closely with, the U.S. Attorney's Office in Southern Illinois. In 2007, that office obtained an indictment against Kimoto for mail fraud, wire fraud, and conspiracy. On April 18, 2008, a federal jury found Kimoto guilty on all 14 counts of the indictment. Based on the enormity and audacity of his fraudulent behavior, he received a 29 year prison sentence.
- ▶ **MacArthur.** In February 2005, the FTC sued Russell MacArthur – a second time – for operating a fraudulent business opportunity, American Entertainment Distributors, Inc. Because of MacArthur's repeated hardcore fraud, CLU referred the case to DOJ's Office of Consumer Litigation (OCL). Later that year, OCL and the U.S. Attorney for the Southern District of Florida used evidence developed by the FTC to indict MacArthur and seven others. MacAr-

thur had bragged that he could evade law enforcement by running a scam for a year, shutting it down, then starting all over again. The cooperative efforts of federal prosecutors, the U.S. Postal Inspection Service, and CLU proved him wrong. On May 26, 2008, he was sentenced to 23 years in prison for mail fraud, wire fraud, and contempt of a 2002 FTC Order.

B. Data Security and Privacy Law Enforcement

Data security and the protection of consumer privacy remain a central focus of the FTC's consumer protection mission. New technologies undoubtedly provide enormous benefits to consumers. At the same time, however, these technologies pose new threats to sensitive consumer data and the security of personal computers and email. The FTC is vigorous in its efforts to protect consumers from these threats.

Data Security Enforcement. The FTC enforces several laws, in addition to the FTC Act, to address data security issues. The Safeguards Rule, under the Gramm-Leach-Bliley Act, contains data security requirements for financial institutions. The Fair Credit Reporting Act (FCRA) requires consumer reporting agencies to use reasonable procedures to ensure that the entities to which they disclose sensitive information have a permissible purpose for obtaining that information. The FCRA also imposes safe disposal obligations on entities that maintain consumer report information. To date, the FTC has brought 25 enforcement actions challenging inadequate security practices by companies that handle sensitive consumer data.

- ***TJX Companies, Inc.*** The Commission announced a settlement with TJX, which operates more than 2,500 stores worldwide, resolving allegations that the company failed to use reasonable and appropriate security measures to prevent unauthorized access to personal information on its computer networks. An intruder exploited these failures to obtain information from tens of millions of credit and debit payment cards used to make purchases at the stores, as well as the personal information of approximately 455,000 consumers who returned store merchandise.
- ***Reed Elsevier, Inc./Seisint, Inc.*** In addition to its challenge to the merger of rivals Reed Elsevier and Choice Point, the Commission also reached a settlement agreement with Reed Elsevier with respect to data security breaches. Reed Elsevier conducts its data broker business through its LexisNexis division and its subsidiary, Seisint. The companies collect and store information about millions of consumers, including names, addresses, dates of birth, drivers license numbers, and Social Security numbers. The Commission alleged that because of security failures, identity thieves obtained access to sensitive information concerning at

HP/International Association of Privacy Professionals Privacy Innovation Award

The Hewlett-Packard/International Association of Privacy Professionals Privacy Innovation Award was granted to the FTC for its innovative work in protecting personally identifiable information. “Creating this sort of enthusiasm and involvement leads to a real and positive privacy mindset among employees,” said one judge. Another admired the FTC program as, “a very creative idea that achieved a serious and proven result.”

least 316,000 consumers. This information was used to activate credit cards and open new accounts.

Both the TJX and Reed Elsevier settlements require the companies to establish and maintain comprehensive security programs designed to protect the personal information they collect. In addition, the companies must retain independent, third-party security auditors to assess these programs on a biennial basis for 20 years. The auditors must be able to certify that company security programs meet or exceed FTC order requirements and operate effectively to afford reasonable assurance of protection for consumers’ personal information.

- **CVS Caremark.** The FTC reached a settlement agreement with the largest pharmacy chain in the U.S., resolving allegations that the company failed to take reasonable and appropriate security measures to protect sensitive financial and medical information concerning customers and employees. The Commission alleged that the information was left in unsecured dumpsters in locations across the country. In bringing this action – the first data security case involving a health care provider and the first to challenge security practices with respect to employee data – the Commission proceeded jointly with the Department of Health and Human Services.
- **Gregory Navone.** The Commission filed a complaint in district court charging this defendant with violation of the FCRA by disposing of consumer reports, and information derived from such reports, in a manner that failed to protect the information against unauthorized access. The complaint alleges that Navone disposed of approximately 40 boxes of consumer records – including tax returns, mortgage applications, bank statements, photocopies of credit cards and drivers’ licenses, and at least 230 credit reports – in a publicly accessible dumpster. The matter is currently in litigation in district court in Nevada.
- **Rental Research Services.** Rental Research Services, a consumer reporting agency that sells tenant screening reports to landlords, has agreed to settle FTC charges that it violated the FCRA by failing to screen prospective customers appropriately and, as a result, sold at

least 318 consumer reports to identity thieves. The settlement requires the company and its principal to implement new procedures to ensure that consumer reports are provided only to legitimate businesses for lawful purposes, to establish and maintain a comprehensive information security program, and to obtain audits by an independent third-party security professional every other year for 20 years. A civil penalty of \$500,000 has been suspended due to the defendants' financial condition.

Spyware and Adware. The FTC obtained a temporary restraining order to halt a massive “scareware” scheme by *Innovative Marketing, Inc.* According to the Commission’s complaint, the defendants falsely claimed that scans had detected viruses, spyware, and illegal pornography on consumers’ computers, thereby tricking more than 1,000,000 people into buying their computer security products.

Significant Civil Penalty Cases

ValueClick, Inc.	\$2,900,000
Academy Collection Service, Inc.	\$2,250,000
QVC, Inc.*	\$1,500,000
Sony BMG Music Entertainment	\$1,000,000
Westgate Resorts, Ltd.	\$900,000
Cyberheat, Inc.	\$413,000
All in One Vacation Club, Inc.	\$275,000

* In addition to \$6 million in redress.

Do Not Call Rule Enforcement. The Do Not Call and related privacy provisions of the Telemarketing Sales Rule prohibit most commercial telemarketing to consumers who place their telephone numbers on the National Do Not Call Registry. Over the past five years, the agency has filed 53 enforcement actions against 101 individuals and 122 corporate defendants for rule violations. In 43 of those cases, judgments required payment of more than \$17.8 million in civil penalties and more than \$11 million in consumer redress. During the past year, the Commission announced settlements with telemarketers for mortgage and refinancing services (*Srikanth Venkataraman, d/b/a Scorpio Systems, Ltd.; Software Transformations, Inc.*); satellite television systems (*Star Satellite, LLC; Planet Earth Satellite, Inc.*); and vacation packages (*Westgate Resorts, Ltd.; All in One Vacations*).

CAN-SPAM. The FTC has a long track record in the fight against unsolicited commercial email or “spam.” Since 1997, the FTC has pursued deceptive and unfair spam practices through 95 law enforcement actions against 259 companies and individuals. Of these actions, 32 have targeted violators of the CAN-SPAM Act of 2003, which prohibits deceptive sender and subject lines in commercial email and provides consumers the right to opt out of future commercial email campaigns. The FTC continued its aggressive enforcement efforts during the past year. In *Lance Atkinson*, the Commission obtained a federal court order halting the operation of a vast international spam network, known as the “Herbal Kings,” that marketed prescription drugs and bogus male-enhancement products. New Zealand authorities, working in tandem with the FTC, also took action against this

operation. The FTC also settled two cases, *Cyberheat* and *ATM Global*, as part of its crack-down against companies that illegally expose unwitting consumers, including children, to graphic, sexual spam content. Civil penalties in the two matters totaled nearly \$500,000. Finally, in the FTC's first action under the U.S. SAFE WEB Act of 2006, which strengthens the agency's ability

to cooperate and share information with foreign counterparts, the Commission reached a settlement with *Spear Systems, Inc.* and other defendants, located throughout the U.S., Canada, and Australia, that used spam email to sell weight loss supplements.

Children's Privacy and Security. To make the Internet more secure for children, the FTC actively enforces the Children's Online Privacy Protection Act of 1998 (COPPA) by bringing civil penalty actions against operators of child-directed and general audience websites that fail to obtain parental consent prior to collecting, using, or disclosing personal information obtained from children under age 13. Since the enactment of COPPA, the FTC has brought 14 enforcement actions and obtained \$2.97 million in civil penalties. In the Commission's most recent COPPA case, *Sony BMG Music Entertainment*, a subsidiary of Sony Corporation of America, paid a \$1 million civil penalty to resolve allegations that it knowingly collected a broad range of personal information from at least 30,000 underage children, who registered on 196 of its music fan sites, while failing to notify parents or obtain their consent before collecting or disclosing such information.

C. Consumer Protection Law Enforcement Tools

In an ongoing effort to improve its methods for identifying fraud and deception, as well as privacy and data security violations, the FTC maintains various databases for collecting and analyzing information about consumer experiences in the marketplace. Some of these databases, as well as other resources, are made available to other law enforcement agencies to enhance their efforts to investigate and stop illegal practices.

- **Consumer Response Center.** The Consumer Response Center collects key information from, and provides key information to, consumers and law enforcement authorities. Last year, the CRC handled more than 38,000 inquiries and complaints from consumers and



businesses each week. These contacts come via the FTC's toll-free numbers (1-877-FTC-HELP and 1-877-ID-THEFT), the FTC's website, and by mail.

- ▶ **Consumer Sentinel.** Complaint information collected by the FTC is entered into a secure, online database within the Commission's Consumer Sentinel Network. The agency shares the nearly 13 million consumer fraud, identity theft, financial, and Do Not Call Registry



complaints that it collected through December 31, 2008 with more than 1,700 law enforcement organizations in the U.S., Canada, and Australia. The database enables the FTC and its law enforcement partners to spot trends quickly, target the most serious illegal practices reported by consumers, and coordinate law enforcement efforts with its counterparts.

- ▶ **Do Not Call Registry.** The Registry protects consumers from receiving unwanted commercial telemarketing calls. In 2008, the fees collected from telemarketers, sellers, and service providers were adjusted in accordance with the Do Not Call Registry Fee Extension Act of 2007. The Commission also submitted a report to Congress that outlined efforts taken to improve the accuracy of the Registry and described new procedures to remove disconnected and reassigned numbers. At the end of February 2009, the Registry contained more than 182 million telephone numbers. In addition, the Registry collects Do Not Call consumer complaints that are shared with other law enforcement agencies through Consumer Sentinel. The Registry serves as a model for other countries, and similar programs now operate in Australia, Canada, and Mexico.
- ▶ **Identity Theft Tools.** Since 2002, the FTC, the U.S. Secret Service, and DOJ have provided local and state law enforcement officers with practical tools to assist victims of identity theft, investigate the crime, and work with local prosecutors. To date, the FTC and its partners, now including the U.S. Postal Inspection Service, the American Association of Motor Vehicle Administrators, and the FBI, have conducted 35 seminars, training more than 4,600 law enforcement officers from more than 1,500 agencies.
- ▶ **Spam Database.** For more than 10 years, the FTC has maintained an electronic address to which consumers and businesses can forward unsolicited commercial email or "spam." From March 2008 through February 2009, this mailbox, spam@uce.gov, received approximately 188,000 pieces of spam daily. The total amount of spam received by the FTC increased from more than 500 million pieces last year to more than 567 million this year. The spam database is important to the Commission's CAN-SPAM Act enforcement program, as well as to cases brought by other federal and state agencies.

Top Consumer Complaints in 2008

Category	Number	%
Identity theft	313,982	26
Debt collection (third party & creditor)	104,642	9
Shop-at-home and catalog sales	52,615	4
Internet services	52,102	4
Foreign money offers & counterfeit checks	38,505	3
Credit bureaus, information furnishers, credit report users	34,940	3
Prizes, sweepstakes, and lotteries	33,340	3
Television and electronic media	25,930	2
Banks and lenders	22,890	2
Telecom equipment and mobile services	22,387	2
Computer equipment and software	21,442	2
Business opportunities, employment agencies, work-at-home plans	20,286	2

Chapter 5: Consumer Protection Policy Tools

In addition to bringing law enforcement actions, the FTC promotes consumer protection interests through several other policy tools. These include engaging in rulemaking proceedings; issuing reports; conducting hearings and workshops to explore policy options through dialogue with outside experts and organizations; participating in the work of inter-governmental task forces; testifying before Congress; and making the Commission's views known through letters or comments to other agencies or *amicus* briefs filed in court. These activities enable the FTC to work with industry members, other government agencies, the media, and the public to gather information and establish policies that protect consumers.

A. Rules and Guides

- **Risk-Based Pricing.** The FTC and the Federal Reserve Board published proposed regulations that would require a creditor to give a consumer a risk-based pricing notice when, based in whole or in part on the consumer's credit report, the creditor offers or provides credit to the consumer on terms less favorable than the terms it offers or provides to other consumers. Under the rules, a risk-based pricing notice would be given to the consumer after the terms of credit have been set, but before the consumer becomes contractually obligated. The proposed rules also include certain exceptions to the notice requirement. The most significant exception permits creditors, in lieu of giving a risk-based pricing notice to those consumers



Chairman Leibowitz

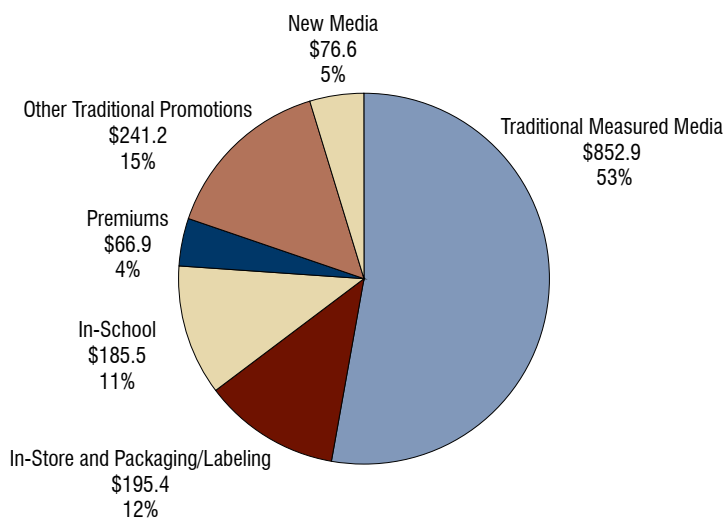
Childhood obesity is now an alarming problem. In speeches, statements, and meetings, Chairman Jon Leibowitz has called on food companies to reformulate their products and reform their advertising to children. In September 2008, he testified before Congress: “[W]hether or not food and beverage marketers are part of the problem . . . they have to be part of the solution: industry can play an instrumental role in influencing children’s food choices and helping to curb the obesity epidemic.” Chairman Leibowitz urged more companies to participate in self-regulatory programs like the CBBB’s Children’s Food and Beverage Advertising Initiative, and others to strengthen their self-regulatory pledges and improve their nutritional standards for foods marketed to children.

- who receive less favorable terms, to provide all of their consumers with their credit scores and explanatory information.
- **Guides on Use of Endorsements and Testimonials in Advertising.** The Commission published a Federal Register notice seeking public comment on proposed changes to the guides. One proposed revision explains that when ads using consumer testimonials convey that the endorser’s experience is representative of what consumers generally will achieve, and the advertiser does not possess adequate substantiation for this claim, the advertiser should clearly and conspicuously disclose the results consumers actually can expect to achieve, rather than simply inserting a disclaimer of typicality.
 - **Telemarketing Sales Rule Amendments.** The Commission amended the Telemarketing Sales Rule to prohibit, as of September 2009 and with certain narrow exceptions, telemarketing sales calls that deliver pre-recorded messages unless the seller has previously obtained the recipient’s signed, written agreement to receive such calls. In addition, effective now, at the outset of all pre-recorded messages, call recipients must be provided an automated key press or voice activated opt-out mechanism.
 - **CAN-SPAM Rule Amendments.** The Rule was amended to clarify what commercial email senders must and must not do to afford recipients the opportunity to opt out of future emails. Recipients cannot be required to pay a fee, provide information other than an email address and opt-out preferences, or take any steps other than sending a reply email message or visiting a single Internet Web page to opt out of receiving future emails from a sender.

B. Studies and Reports

➤ ***Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation.*** The Commission issued a report to Congress based on its study of the 2006 advertising expenditures and activities directed to children and teenagers by 44 major food and beverage marketers. The companies spent approximately \$1.6 billion on marketing to young people ages 2 to 17, with about \$870 million of that amount targeted to children under 12. An additional \$427 million was spent on toy premiums distributed by quick-service restaurants. Television advertising dominates the landscape of food marketing to kids, accounting for 46% of the total. However, most marketing campaigns are fully integrated across multiple venues and techniques that also include product packaging, supermarket or restaurant displays, and the Internet – where kids can enter contests, play online games, and participate in viral marketing. Often food or beverage marketing campaigns involve cross-promotions tied to movie releases, TV programs, or video games. The report concludes with a number of recommendations for food and beverage companies, media and entertainment companies, and self-regulatory initiative programs. In particular, the Commission recommends that all food and beverage companies adopt meaningful nutrition-based standards for products marketed to children under 12.

**Reported Total Youth Marketing Expenditures
by Promotional Activity Group
(In Millions of Dollars)**



Source: FTC report *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation.*

➤ ***Security in Numbers: Social Security Numbers and Identity Theft.*** The FTC issued a report recommending five measures to help prevent identity theft using Social Security numbers. Principal among these recommendations is that Congress consider taking action to strengthen the procedures that private-sector organizations use to authenticate their customers' identities. The Commission concluded that nationwide standards for businesses and

4 Self-Regulatory Principles for Online Behavioral Advertising

1. Companies collecting data for behavioral advertising should provide clear, concise, and prominent disclosure that information about consumers' online activities is being collected and that consumers can choose not to have their information collected.
2. Companies that collect and/or store consumer data for behavioral advertising should provide reasonable security for the data and retain data only as long as necessary to fulfill a legitimate business or law enforcement need.
3. Companies must keep prior promises regarding the handling or protection of consumer data and obtain consumers' affirmative, express consent before using previously collected data in a materially different way.
4. Companies should collect sensitive data for behavioral advertising only after obtaining affirmative, express consent from consumers.

other organizations to verify the identity of new and existing customers would make it more difficult for identity thieves to use SSNs and other stolen information to consummate their fraud. The FTC report also recommends that Congress consider national standards designed to reduce the unnecessary display and transmission of SSNs, as well as national standards for data security and breach notification. Finally, the report recommends increased outreach to consumers and businesses on the protection of SSNs, and enhanced coordination and information-sharing among organizations that routinely use SSNs.

- **Online Behavioral Advertising Principles.** The Commission staff report recommends four self-regulatory principles for online behavioral advertising – the practice of tracking consumers' activities online to provide targeted advertisements. The report was prepared after a 2007 Town Hall meeting and a subsequent request for comments on proposed principles. Comments came from 87 stakeholders, including industry members, consumer and privacy advocates, academics, and individual consumers.
- **Debt Collection Workshop Report.** The Commission issued its report on the 2007 workshop that explored the need for changes in the debt collection system to afford greater protection to consumers. The report reflects the Commission's determination that the debt collection legal system needs to be reformed and modernized to reflect changes in consumer debt, the debt collection industry, and technology. As explained in the report, the Commission concluded that (1) major problems exist in the flow of information within the debt collection system; (2) debt collection laws need to be modernized to take account of changes in technology; (3) certain debt collection litigation and arbitration practices appear to raise substantial consumer protection concerns; (4) debt collection law must evolve to include a regulatory process that ensures

legal requirements keep pace with changes in the marketplace; and (5) debt collection enforcement must be pursued aggressively to deter collectors from engaging in conduct that harms consumers.

- ***Self-Regulation in the Alcohol Industry.*** The Commission report examines industry efforts to reduce the likelihood that alcohol advertising will target those under the federal minimum legal drinking age of 21. This report, which compiles data provided by 12 major alcohol suppliers, is the first to present detailed information about how alcohol companies allocate promotional dollars. In addition, it provides data on compliance with the industry advertising placement standard, discusses the status of complaint review by external review boards, and describes the Commission’s education program to reduce teen access to alcohol.
- **Negative Option Report.** The FTC staff issued a report based on its workshop analyzing negative option marketing. The report describes the highlights of the workshop and, based on the panelists’ recommendations and recent Commission cases, identifies five principles to guide marketers in complying with Section 5 of the FTC Act when marketing negative option plan offers.
- ***Protecting Consumers in the Next Techade.*** The Commission issued a staff report highlighting the challenges of consumer protection in the face of emerging and evolving technologies in the next 10 years. The report summarizes the proceedings of the FTC’s three-day public hearings describing how changing technology will inform its consumer protection efforts in the next decade.

5 Guiding Principles for Marketing Negative Option Plans

1. Disclose the material terms of the offer in an understandable manner.
2. Make the appearance of disclosures clear and conspicuous.
3. Disclose material terms before consumers pay or incur a financial obligation.
4. Obtain consumers’ affirmative consent to the offer.
5. Don’t impede the effective operation of promised cancellation procedures.

C. Hearings and Workshops

- **Phishing Education Roundtable.** About 60 experts from business, government, the technology sector, consumer advocacy groups, and academia took part in an FTC roundtable discussion about phishing – *i.e.*, the use of deceptive spam that appears to come from a legitimate source to trick consumers into divulging sensitive or personal information. The subse-

quent staff report highlights possible ways to change consumer behavior to combat phishing attempts and notes the various efforts of the participants to fight phishing.

- ▶ **Debt Settlement Workshop.** FTC staff convened a workshop to examine the growth of the for-profit debt settlement industry and the effectiveness of existing consumer protections related to that industry. Participants, including consumer advocates, industry representatives, and state and federal regulators, explored the history and development of the industry, regulation and legal developments, advertising and marketing of debt relief services, and consumer education. The workshop concluded with a panel discussion about the adequacy of existing laws addressing this industry. FTC staff is using information gleaned from the workshop to evaluate possible changes in law or policy that might assist the agency in protecting consumers who seek debt settlement services.
- ▶ **Protecting Personal Information: Best Practices for Business.** FTC staff organized three public workshops, in Chicago, Los Angeles, and Dallas, on how businesses can secure the personal information they collect from consumers. The workshops featured business people,

attorneys, government officials, privacy officers, and other experts discussing data security issues, best practices for developing an appropriate data security program, and appropriate responses to security problems, including data breaches.

Does Your Organization Collect and Keep Sensitive Information?

A FREE "Best Practices" Workshop for You

- ▶ **RFID workshops.** The FTC held two workshops on privacy and security issues associated with RFID (radio frequency identification) applications. Both followed up on issues raised at the FTC's 2004 RFID workshop, as well as at the Tech-Ade hearings held in 2006. **Pay on the Go** was a Town Hall meeting held in Seattle that focused on "contactless" payment applications and their implications for consumers. The **Transatlantic RFID Workshop on Consumer Privacy and Data Security**, held in Washington, D.C., explored the deployment of two RFID applications – "contactless" payment and item-level tagging in the retail sector – in Europe and the U.S., as well as strategies for protecting consumer privacy as the technology becomes more prevalent.



- **Consumer Information and the Mortgage Market.** This conference, organized by the Commission's Bureau of Economics, brought together academic and research experts from several specialties, including real estate finance and economics, consumer behavior, and information regulation, to discuss how consumer information and information regulation affects consumer choices, mortgage outcomes, and consumer welfare.

“Economically sound solutions to these problems require an understanding of why current consumer protection policies may have failed, as well as an assessment of the likely long-run effects of alternative proposed policies on consumer choice and competition in mortgage markets.”

*Michael Baye, then Director, BE,
Consumer Information and the Mortgage Market Conference,
May 29, 2008.*

- **Beyond Voice: Mapping the Mobile Marketplace.** The Commission hosted a two-day town hall meeting to explore the evolving mobile commerce marketplace and its implications for consumer protection policy.
- **Fraud Forum.** The Commission hosted a two-day forum to explore how the FTC can protect consumers more effectively against fraud in the marketplace.

D. Intergovernmental Task Force

- **President's Identity Theft Task Force Report.** The Task Force, led by the Attorney General and the FTC Chairman, released a report documenting the federal government's progress in addressing the problem of identity theft. The Report discusses expansion of the Task Force's existing data security and identity theft business and consumer education campaign; improvement of consumer authentication processes to prevent the use of stolen information to commit identity theft; launching new initiatives to help identity theft victims; and improving law enforcement tools to investigate and prosecute identity thieves.

E. Advocacy Letters, Comments, and *Amicus* Briefs

- ***Altria Group, Inc. v. Good.*** The FTC joined in an amicus brief filed in the Supreme Court by the United States. The brief urged the Court to reject Altria's argument that, as a result of certain actions taken by the FTC, state law claims brought by a consumer against a cigarette company had been impliedly pre-empted. The brief explained that this argument was based on a mischaracterization of the role that the Commission has played with respect to the advertising of the tar and nicotine yields of cigarettes. The Court's decision was consistent with the Commission's position.

FTC Privacy Program

The FTC has a comprehensive, award-winning privacy program that serves as a model for other federal agencies. Under the direction of Chief Privacy Officer Marc Groman, the FTC continues to assess privacy risks and expand its efforts to safeguard data.

Over the past year, for example, the FTC established a new process for receiving, tracking, and responding to complaints concerning privacy; streamlined privacy impact assessment procedures for new technologies; and concluded a comprehensive review of the agency's Privacy Act system of records notices and online privacy policy.

The cornerstone of the FTC's privacy program remains the annual agency-wide "Privacy Week." This week-long series of seminars, activities, and contests put privacy center stage at the FTC.

In September 2008, the FTC received the HP/IAPP Award for Innovation in Privacy for the Privacy Week program.



- **Cigarette Test Method.** The FTC announced its rescission of guidance issued in 1966 that generally permitted statements concerning tar and nicotine yields if they were based on the Cambridge Filter Method, sometimes also referred to as the "FTC Method." The Commission stated that advertisers should no longer use terms suggesting the FTC's approval or endorsement of any specific test method. In its announcement, which followed a public comment period, the FTC noted the current scientific consensus that machine-based measurements of tar and nicotine yields based on the Cambridge Filter Method do not provide meaningful information to consumers and stated that the underlying premise for the 1966 guidance was no longer valid. The Commission indicated that it would not allow its stamp of approval on a test method that is confusing or misleading to consumers.
- **Mortgage Lending.** FTC staff submitted comments to the Federal Reserve Board on proposed rules under the TILA and the Home Ownership and Equity Protection Act. The staff comments supported proposed restrictions on appraisal servicing and advertising practices, as well as revised requirements for the timing of disclosures to consumers. The comments noted that proposed restrictions on higher-cost loans appeared reasonably balanced, but suggested that the Board continue to weigh costs and benefits based on empirical evidence. Finally, the FTC staff raised concerns that proposed mortgage broker compensation disclosures might be more harmful than beneficial to consumers and harm competition. Accordingly, the Commission staff recommended that the Board consider alternative approaches.

FTC staff also provided comments to the Department of Housing and Urban Development (HUD) concerning proposed revisions to the mortgage settlement disclosures required under the Real Estate Settlement Procedures

Act. The staff noted that while some of the revisions could improve consumer understanding and facilitate comparison shopping, other proposals might further complicate the already complex mortgage lending process. The staff suggested that consumers would benefit most from a comprehensive effort to reform mortgage disclosures and recommended that HUD collaborate with the Federal Reserve Board to develop a single mortgage disclosure document.

Claudia Simons - OCR

An attorney in the Office of Congressional Relations, Claudia serves as the Commission's liaison to Congress on a wide range of consumer protection issues. Claudia coordinates briefings for Congressional staff, provides drafting assistance to Members' offices and helps to prepare FTC witnesses to testify before Congress on issues ranging from mortgage lending and credit reports to childhood obesity. Claudia has coordinated the Commission's input into numerous legislative initiatives that affect consumers and consumer privacy, including bills addressing identity theft, data security, the Fair Credit Reporting Act, and the Gramm Leach Bliley Act.



- **Home Valuation.** FTC staff submitted comments to the Federal Home Loan Mortgage Corporation (Freddie Mac) regarding its proposed settlement agreement with the Federal National Mortgage Association (Fannie Mae), the New York Attorney General, and the Office of Federal Housing Enterprise Oversight (now the Federal Housing Finance Agency) regarding the related Home Valuation Code of Conduct. Under the settlement, as of May 2009 Freddie Mac and Fannie Mae will no longer purchase single-family home mortgage loans, unless government insured, from originators that do not adopt the Code. The comments expressed general support for efforts to improve the lending process, but warned that certain Code provisions – such as prohibiting mortgage brokers from ordering appraisals – could result in higher prices for consumers.

F. Congressional Testimony

- **Prepaid Calling Cards.** The Commission testified before both the Senate Committee on Commerce, Science, and Transportation and the House Subcommittee on Commerce, Trade and Consumer Protection of the Committee on Energy and Commerce regarding FTC efforts to combat the deceptive advertising of prepaid phone cards. The Commission expressed support for pending legislation that would require calling card providers and distributors to disclose, clearly and conspicuously, the dollar value of their calling cards or the number of

minutes provided by the cards, as well as other fees, conditions, or limitations attached to use of the cards.

- **Food Marketing to Children and Adolescents.** The Commission testified before two Subcommittees of the Senate Committee on Appropriations regarding the Commission's efforts to address childhood obesity and the findings and recommendations contained in the Commission's food marketing report.
- **Subprime Lending.** The Commission testified before the Subcommittee on Interstate Commerce, Trade, and Tourism of the

"The Commission is committed to using all means at its disposal to protect mortgage borrowers from those who would prey on their financial turmoil, and to provide information to help these consumers confront the challenges they face."

Lydia Parnes, then Director, BCP, testimony before the Senate Committee on Commerce, Science, and Transportation, Subcommittee on Interstate Commerce, Trade, and Tourism, April 29, 2008.

Senate Committee on Commerce, Science, and Transportation about the Commission's continuing efforts to protect subprime mortgage borrowers. The Commission described its areas of focus – deceptive mortgage advertising, deceptive or unfair servicing practices, discrimination in lending, and foreclosure rescue scams – noting that in the past de-

cade the Commission has brought 22 actions in the mortgage area, with particular attention to the subprime markets.

- **Behavioral Advertising.** The Commission testified before the Senate Committee on Commerce, Science, and Transportation about the privacy issues raised by online behavioral advertising, as well as the potential benefits to consumers of such targeted advertising.
- **Spyware and Other Malware.** The Commission testified before the Senate Committee on Commerce, Science, and Transportation that legislation authorizing the Commission to seek civil penalties in spyware cases could add a potent remedy to other enforcement options – such as seeking consumer redress or disgorgement of ill-gotten gains – already available to the Commission.
- **Call Centers.** The Commission testified before the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, regarding a bill that would require call center employees to disclose, in telephone calls with consumers, the physical location of the call center. The Commission described its telemarketing fraud enforcement program, but noted that its experience did not touch upon the labor and foreign trade issues at the heart of the proposed legislation.

- **Credit Crisis.** The FTC testified before the Senate Committee on Commerce, Science, and Transportation, on how it protects consumers from harmful acts and practices at every stage of the credit life-cycle, from when credit is first advertised to when debts are collected. The Commission emphasized its recent law enforcement actions in the areas of debt collection, deceptive credit card marketing, mortgage advertising, mortgage foreclosure rescue scams, and credit repair.

Chapter 6: Consumer Protection Education and Outreach

The FTC educates consumers and businesses using a variety of products and techniques: print publications, websites, videos, interactive quizzes, tutorials, and presentations. The FTC's resources give people tools to make informed decisions and educate businesses on their rights and responsibilities in the marketplace. Since March 2008, the FTC has distributed 11.7 million print publications in English and Spanish and logged more than 37.8 million accesses to materials on Commission websites.

In 2008, the FTC developed initiatives to help consumers manage their financial circumstances; to stay safe online, safeguard their personal information, and protect their identities; to avoid fraud, like deceptive telemarketing schemes and cancer treatment scams; and to be aware of emerging scams or other consumer issues.

- **Department of Defense Financial Readiness Challenge Events.** The FTC is working with the Department of Defense to distribute thousands of copies of Commission materials at a series of Financial Readiness Challenge Events at military installations around the country. The events range from small lunch meetings to larger presentations and major information fairs for service members and their families.
- **Credit Repair Sweep.** As part of the Operation Clean Sweep crackdown on deceptive credit repair operations, the FTC prepared two consumer publications, *Credit Repair: How to Help Yourself* and *Credit Repair: How to DIY and Avoid a Scam*; a series of short web videos; and public service announcements and classified ads sent to radio stations and newspapers in every state. The campaign also reached out to personal finance blogs and provided a syndicated "drop-in" article to more than 10,000 community newspapers.
- **OnGuard Online.** In conjunction with the FTC's Phishing Roundtable, the agency announced three online videos to alert consumers to phishing scams. The videos have been accessed over 960,000 times



through the FTC's website, YouTube, and Facebook. The FTC also unveiled the revamped OnGuard Online website and its Spanish-language counterpart, Alerta En Linea. Since the site launch in 2005, visitors have logged more than 9 million visits. The new Web 2.0 redesign allows users to grab and embed games and videos, search for topics on the site, and have a more interactive experience while getting useful tips and information.

- ▶ **Identity Theft: Deter-Detect-Defend Campaign.** The Commission has developed a second consumer education toolkit with everything an organization needs to host a "Protect Your Identity Day." The kit has information and materials on how to deter, detect, and defend against identity theft, including handouts to customize and print, videos, a speech, a PowerPoint presentation, answers to frequently asked questions, and materials to use for outreach to community partners and local media – in both English and Spanish. Since the campaign launch in 2006, the FTC has distributed nearly 100,000 consumer education kits,

"I received an automated phone call attempting to obtain my credit card number and two other pieces of sensitive information. I did not provide any information . . . I already know, thanks to the FTC's publicity about identity theft, that this was a fraudulent attempt to gain sensitive information."

Consumer in Washington, DC

over 26,000 *Protect Your Identity Day* kits, more than 3.5 million copies of the victim assistance guide, more than 4.5 million copies of a brochure, and more than 500,000 copies of a special brochure for military personnel and their families. In February 2008, the U.S. Postal Service mailed the FTC's Deter, Detect, Defend brochure to 121 million households with a cover letter from the Postmaster General.

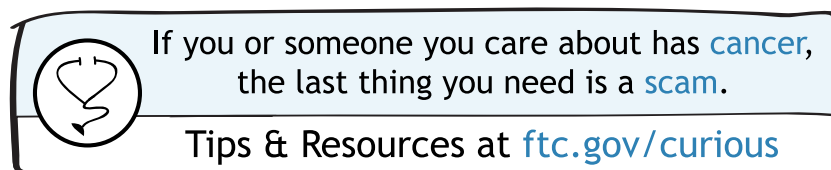
- ▶ **Naval Criminal Investigative Service.** NCIS, the Navy's primary law enforcement and counterintelligence arm, is using FTC resources on its identity theft prevention campaign that runs from January through March 2009. NCIS is distributing hundreds of thousands of copies of FTC materials to Navy and Marine installations and ships around the world and creating audio and video products to distribute through several military media outlets.
- ▶ **Who's Calling? Recognize & Report Phone Fraud.** The Phone Fraud campaign shows people how to recognize and report telemarketing scams and encourages them to register their phone numbers on the National Do Not Call Registry for a tried and true way to stop most unwanted telemarketing calls.



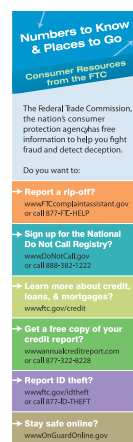
2008 Service to America Finalist

FTC's Division of Consumer and Business Education and its Associate Director, Carolyn Shanoff, were named as finalists for the Partnership for Public Service's Citizen Services Medal for their work in preventing identity theft by educating more than 120 million American households about the crime. "[T]he agency has armed thousands of local law enforcement officials with tools to help identity theft victims, equipped tens of thousands of local organizations with materials to educate their members about avoiding identity theft, and distributed millions of publications directly to consumers. . . . Carolyn Shanoff and her team at the FTC are giving U.S. consumers the tools they need to fight back and reduce their chances of becoming victims of this devastating crime."

- **Cure-ious? Ask.** The Commission launched the *Cure-ious? Ask* campaign to raise awareness about cancer treatment scams, resulting in nearly 170 mentions in blogs related to health or cancer. People with cancer, their families, caregivers, and medical teams can visit the site for information about products on the Internet that claim to cure or treat cancer; download or embed a 90-second video that shows how to recognize a likely scam; or grab the web buttons and free content for other sites, blogs, newsletters, or magazines.



- **Who Cares: Sources of Information About Health Care Products and Services.** *Who Cares* is a resource guide that points older consumers and their caregivers, family, and friends to reliable sources of information on a variety of health topics, including generic drugs, hormone therapies, hiring caregivers, medical ID theft, hearing aids, and alternative treatments. *Who Cares* explains how to find dependable health information online and where to file a complaint, in addition to advising readers to talk over health decisions with their doctor.
- **Numbers to Know & Places to Go Bookmark.** The Commission released the Numbers to Know bookmark, which is organized by topic and provides a one-stop reference of phone numbers and websites for the FTC's most popular resources. The FTC has distributed more than 425,000 bookmarks in English and Spanish.
- **Green Lights, Red Flags.** In 2008, FTC staff, and local partners held workshops in Nashville, Dallas, and Minneapolis to teach businesses how to comply with federal truth-in-advertising laws.



The Commission also issues warnings of new and emerging scams and advice on new consumer issues as they arise. For example, in *A Scam Based on Relative-ity: Would-Be Grandchildren Bilking Honest Grandparents*, the FTC warns consumers that scammers may be impersonating family members to convince them to wire money. In addition, the FTC offers parents a quick guide to online virtual worlds and how to help kids avoid content or virtual spaces that might be inappropriate for them with the alert, *Virtual Worlds and Kids: Mapping the Risks*.

FTC Goes Green

In response to a virtual tsunami of green marketing, the Commission initiated a review of its Guides for the Use of Environmental Marketing Claims (Green Guides) a year earlier than planned. Given the breadth and importance of green marketing claims, the Commission then launched an ambitious information gathering, law enforcement, and rulemaking plan.



Studies and Information Gathering

- ▶ **Green Guides Review.** In November 2007, the Commission published a *Federal Register* notice seeking public comment on the applicability of the Green Guides to the current market and the need, if any, for changes to meet current challenges.
- ▶ **Workshops.** The Commission hosted three workshops on green marketing, bringing together industry members, consumer advocates, environmental groups, and academics to focus on particular green marketing issues. Specifically, the Commission hosted the Carbon Offset and Renewable Energy Certificate Workshop, the Packaging Workshop, and the Textile and Building Workshop.
- ▶ **Study.** The Commission announced that it would conduct consumer perception research focusing on particular green marketing claims, such as “eco friendly,” “sustainable,” and “carbon neutral.”

Enforcement

- ▶ **Gas Saving Devices.** The Commission filed two federal court actions, *Sullivan* and *Dutchman Enterprises*, against marketers of “miracle” devices advertised to dramatically increase gas mileage in ordinary cars. In each case, the Commission alleged that the claims for the device violate basic scientific principles.
- ▶ **R-Value.** The FTC recently initiated three civil penalty actions alleging that marketers of home insulation products deceived consumers by overstating the insu-

lating properties, i.e., the R-value, of their products. In two of the cases, *Meyer Enterprises* and *Enviromate*, the defendants have settled with the FTC. The Department of Justice has filed the third case, *Sumpolec*, at the Commission's request.

"Many people care about saving energy and money these days, and better insulated homes can help them do both. The FTC polices deceptive R-value claims to make sure that companies advertise truthfully and that people can buy insulation with confidence."

*Eileen Harrington, Acting Director, BCP
(press release, March 5, 2009).*

Rulemaking

- ▶ **Lamp Light Labeling.** Pursuant to the Energy Independence and Security Act of 2007 (EISA 2007), the Commission has initiated a rulemaking proceeding to examine energy labeling for light bulbs. To aid in this endeavor, staff hosted a roundtable discussion with stakeholders, and based on information obtained at that discussion, the FTC is in the process of conducting research on alternative labeling approaches.
- ▶ **Television and Consumer Electronics.** Recognizing that some new televisions use as much energy as refrigerators, the Commission initiated a rulemaking proceeding to explore energy labeling for televisions. Pursuant to EISA 2007, the Commission is also seeking comment on energy labeling for other consumer electronics, such as personal computers and monitors. This type of labeling could assist consumers seeking to make more energy efficient choices.

Consumer Education

- ▶ ***The 411 on Disposing of Your Old Cell Phone.*** In this consumer alert, the FTC gives tips for erasing data and disposing of old cell phones and other mobile communication devices and discusses the options that include recycling, reselling, and donating.



Section Three: International Activities



Michael Lantz made dozens of monumental, figurative, and memorial sculptures for government buildings, churches, and other sites around the United States. In 1938, at age 29, Michael Lantz won a \$45,600 commission for two monumental stone sculptures. Entitled *Man Restraining Trade*, each depicts a burly figure reining in a bucking horse. Mr. Lantz studied at the National Academy of Design and the Beaux Arts Institute in New York. He served as the president of the National Sculpture Society, was editor of the *Sculpture Review*, and taught at the National Academy School of Fine Arts in New York.

Text drawn from General Services Administration website



Section Three: International Activities

Today, commerce knows no borders. Consumers and businesses around the world buy and sell products, share information, and explore their common interests without reference to geography. People who speak different languages have created a whole new language in this truly global marketplace: they can chat, friend, share, tweet, and blog, on a vast network of devices that collapse the distances between them.

Globalization has created unprecedented opportunities for commerce but also great challenges for law enforcement agencies around the world, including the FTC. The FTC works in several ways to meet these challenges and protect consumers in the global marketplace. First, the FTC coordinates with international law enforcement agencies to find the source of unfair, deceptive, or anticompetitive conduct, wherever the individual or company may be located, and to obtain necessary evidence to support its enforcement actions. Second, the FTC engages established competition and consumer protection agencies in other countries, as well as multilateral organizations, to provide policy leadership and promote sound approaches to common problems. Finally, the Commission reaches out to new or recently established competition and consumer protection authorities to help them develop their institutions and train their staff to deal with their own particular challenges in evolving to a market-based economy.

Chapter 7: Competition

The FTC continues to build cooperative relationships with foreign antitrust agencies to support its competition enforcement workload, to ensure close collaboration on cross-border cases, and to promote convergence toward sound competition policies worldwide. As part of these efforts, the FTC cooperates on multi-jurisdictional investigations, provides policy leadership through bilateral consultations and participation in multilateral competition organizations, and sponsors technical assistance to promote the establishment of successful new competition authorities in developing economies, such as China and India.

A. International Aspects of Competition Law Enforcement

The FTC seeks to improve coordination in cases of suspected unilateral anticompetitive conduct, and to produce more effective review of multi-jurisdictional mergers. The FTC cooperates with



Commissioner Kovacic

Since the creation of the federal antitrust system in the late 19th century, economic crises have inspired policies that suppressed competition in the name of spurring recovery. Means to this end have included measures that curb entry by new entrepreneurs, forestall imports, or mandate industry-wide cooperation on pricing, output, or product introduction. These steps failed to alleviate economic hardship in the short-term and retarded economic growth after the crisis had passed. In the past, the FTC has served the nation well by speaking against these policies. No duty of the Commission is more important today than doing so again.

its international counterparts on merger and nonmerger cases in each of the industries in which it focuses its competition enforcement activities: health care, energy, chemicals, technology, retail, and consumer goods. Examples of cases in which the FTC worked with other competition agencies in the past year include:

- ***Dow/Rohm & Haas.*** The Commission worked with the European Commission (EC), the Canadian Competition Bureau, and the Mexican Federal Competition Commission to resolve competitive concerns raised by Dow Chemical's proposed \$18.8 billion acquisition of rival Rohm & Haas. The FTC and the Canadian Competition Bureau worked with the companies on a coordinated divestiture package that resolved U.S. and Canadian competition issues should the merger take place.
- ***Hexion/Huntsman.*** The FTC worked with the EC, the Canadian Competition Bureau, and the Mexican Federal Competition Commission to resolve charges that Hexion's proposed \$10.6 billion acquisition of Huntsman Corp. would substantially lessen competition in the markets for high performance and specialty epoxy resins used in aerospace, power generation, and wind turbine applications. The FTC and EC accepted compatible consent orders with the parties.

B. Promoting Convergence Toward Sound Competition Policies

An important goal of the FTC's international program is to promote convergence of sound policy approaches around the world building consensus around sound policy choices. The Commission works to achieve this goal by participating in bilateral negotiations and consultations and through its membership in a variety of multilateral organizations.

Bilateral Projects. Tools for building more effective bilateral relationships include regular discussions and case coordination with international partners. The FTC worked during the past year on policy and enforcement issues with agencies from the European Union (EU) and its member states, Australia, Brazil, Canada, Israel, Korea, Mexico, New Zealand, Switzerland, and other jurisdictions. In addition, then Chairman Kovacic led formal bilateral consultations with competition agencies from the EU, Japan, and Korea, and met with counterparts from many others including Panama, Taiwan, the United Kingdom, and Zambia. The FTC also provides input when requested by foreign agencies regarding their competition policies.

- ▶ **China and India.** The FTC is participating in U.S. efforts to encourage the adoption of sound antitrust policies and enforcement practices as its counterparts in India and China begin to implement their new antitrust laws. After China's Antimonopoly Law took effect in August 2008, for example, FTC and DOJ staff visited China several times to work with the staff of the Chinese agencies on implementation issues. The FTC also contributes to the cabinet-level Strategic Economic Dialogue between the U.S. and China. The FTC has maintained a dialogue with the Competition Commission of India as it moves toward implementing India's new Competition Act.
- ▶ **Free Trade Agreements.** U.S. free trade agreements often include provisions regarding competition issues. The FTC participates in the U.S. delegations that negotiate these provisions as they arise.

Participation in Multilateral Competition Fora. Multilateral competition organizations provide valuable opportunities to promote international cooperation and convergence and for competition officials to share ideas on law enforcement and policy initiatives. The FTC has strengthened the roles that it plays in the International Competition Network (ICN) and the competition bodies of the Organization for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), and the Asia-Pacific Economic Cooperation (APEC) forum.

- ▶ **International Competition Network.** The FTC has taken a leadership role at the ICN from its inception. Currently consisting of 103 competition agency members from 92 jurisdictions, the ICN is a key venue for antitrust authorities to exchange ideas and to work together to promote substantive and procedural convergence through the development of best practices. The FTC plays a lead role in several significant ICN projects, such as co-chairing the Unilateral Conduct Working Group, which during the past year produced recommended practices on the assessment of substantial market power and the application of unilateral conduct rules to state-created monop-



lies. The FTC is co-hosting an ICN workshop in March 2009 on Assessing Dominance/ Substantial Market Power and Evaluating Unilateral Conduct. The FTC chairs the ICN subgroup on Merger Notification and Procedures, which is developing guidance on information requests in merger investigations. This group has had great success in fostering implementation of its recommended practices, which have become an international benchmark. The Commission also plays an important role in the ICN's working group on Competition Policy Implementation, which assists recently established antitrust authorities in developing their institutional capabilities, chairing the group that launched the ICN's successful training conference calls. Under the auspices of the ICN's Partnership program, the FTC established a consultative partnership with the Barbados Fair Trading Commission under which the FTC and Barbadian staff hold regular telephone conference calls and consult as needed. Finally, in January 2009, then Chairman Kovacic was named the ICN's Vice Chair for Outreach.

- **OECD.** The OECD Competition Committee is a valuable forum for competition officials from developed countries to share experiences and discuss best practices. Its recent sessions addressed topics including bundling and loyalty rebates, resale price maintenance, market studies, monopsony, and vertical relations in gasoline retailing. Most U.S. submissions to the Committee are available on the FTC's website. In February 2009, the FTC participated in the OECD's Global Forum on Competition with representatives from almost 90 agencies in non-member developing countries. The Forum included a program on challenges faced by recently established competition agencies that featured then Chairman Kovacic. The FTC also continues to participate in regional OECD programs for non-members, including the Latin American Competition Forum.



- **UNCTAD.** The Commission participates in UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy and in regional competition programs, which in the past year have included programs on agency independence and accountability, intellectual property, and the abuse of dominance.



Chapter 8: Consumer Protection

The emergence of new consumer markets and consumer policy models around the world, as well as the continuing evolution of technology, raise complex global consumer protection challenges. Spam, phishing, spyware, telemarketing fraud, identity theft, data security, and privacy breaches can be international in scope. The resulting enforcement and policy challenges require the FTC to work closely with counterparts in foreign agencies and international organizations, particularly with

The 2008 Certificate of Excellence in Accountability Reporting (CEAR)

The FTC was one of only 17 agencies to receive the CEAR award for excellence in accountability reporting. “Given public perceptions about government fiscal accountability and transparency, the achievement of this year’s CEAR recipients is even more significant,” said Relmond P. Van Daniker, Association of Government Accountants. “The agencies and departments being honored today truly represent an elite group within the government financial reporting community.”

respect to one of the FTC’s highest priorities – combating fraud and deception in the marketplace. The growth of Internet and mobile based business-to-consumer commerce, technology-enabled consumer-to-consumer interactions, and the effects of the current financial crisis also raise numerous consumer protection and privacy concerns. The FTC addresses these challenges with a broad-based international program that focuses on protecting consumers in the global marketplace while maximizing economic benefits and consumer choice.

“I have not been victimized. Thanks to your web site, I was able to identify the fraud before I acted.”

Consumer in New York

A. The U.S. SAFE WEB Act and International Law Enforcement Cooperation

The FTC continues to expand its international enforcement cooperation, using the tools provided by the U.S. SAFE WEB Act. The Act enhances the FTC’s ability to cooperate with foreign law enforcement authorities on consumer protection enforcement matters that cross national borders, including spam, spyware, and telemarketing fraud, misleading health and safety claims, and privacy and security breaches. In the past year, the FTC shared information and assisted in cross-border investigations, exchanged staff with foreign authorities, cooperated with the DOJ’s Office of Foreign Litigation, and worked toward international mutual assistance agreements with Canada and the European Community.

- **Information Sharing.** The FTC focuses its new information sharing and investigative assistance authority on matters that have substantial impact in the marketplace and the greatest potential benefit for consumers. In the past year, the FTC has acted vigorously to protect consumers from fraud and deception in the global marketplace. For instance, the FTC has

responded to 31 requests to share information from 13 foreign enforcement agencies in six countries. The FTC has used its U.S. SAFE WEB Act authority to share information with 10 foreign agencies from five countries in response to 13 requests in cross-border consumer protection matters, including fraudulent telemarketing scams, deceptive mail schemes, pyramid schemes, and spam cases. The FTC has also used its new investigative assistance authority to issue six civil investigative demands on behalf of four foreign agencies.

- ▶ **Enforcement Actions.** During the past year, the FTC filed or obtained judgment in the federal courts in at least 15 cases with a major international aspect, including cases that involved significant cooperation with counterparts in Australia, Canada, Colombia, Egypt, El Salvador, Mexico, New Zealand, Panama, Peru, Ukraine, and the U.K. For example, based on reciprocal information sharing with law enforcement colleagues in Australia, Canada, and New Zealand, the FTC shut down and froze the assets of a vast international spam email network in *Lance Atkinson*, a case filed in federal district court in Illinois. The network, which has been identified as the largest “spam gang” in the world by the anti-spam organization Spamhaus, is charged with peddling prescription drugs and bogus male-enhancement products. The FTC received more than three million complaints about spam messages connected to this operation and estimates that it may have been responsible for sending billions of illegal spam messages. New Zealand authorities, working in tandem with the FTC, filed a civil case against members of the spam operation in the New Zealand courts. The FTC’s strong bilateral and multilateral relationships with consumer protection and other law enforcers around the world also played a key role in many of the significant law enforcement actions highlighted in this report, such as *Operation Tele-PHONEY*, *Operation “False Cures” Cancer Sweep*, *Innovative Marketing, Inc.*, *Enterprise Who’s Who*, *Spear Systems, Inc.*, *Alternatel, Inc.*, and *Clifton Telecard Alliance*.
- ▶ **Reaching Foreign Assets.** The FTC continues to develop common programs with domestic counterparts to deepen the impact of its international programs. Taking advantage of the U.S. SAFE WEB Act’s framework to expand cooperation with DOJ, the Commission detailed an attorney to work part-time at DOJ’s Office of Foreign Litigation on matters in which the FTC has a law enforcement interest. Through this effort, the FTC hopes to reach foreign assets for consumer redress, an FTC priority.
- ▶ **Cross-Border Efforts with Canada.** The FTC works closely with consumer protection and other law enforcement officials in Canada, to confront the problem of cross-border mass-marketing fraud. The FTC participates in regional partnerships with Canadian and other U.S. enforcers in Montreal, Toronto, Vancouver, Alberta, and the Atlantic Provinces and has hosted two Canadian officials as part of the FTC’s International Fellows and Interns

program. These cooperative efforts have paid off in numerous cases this year, including those filed in *Operation Tele-PHONEY*, the largest telemarketing sweep ever coordinated by the FTC. The sweep included eight cross-border telemarketing fraud actions brought by the Canadian Competition Bureau and the British Columbia Business Practices and Consumer Protection Authority.

Stacy Feuer – OIA

As Assistant Director for International Consumer Protection in the Office of International Affairs, Stacy coordinates the FTC's efforts to combat cross-border fraud, working with agency litigators, building strong relationships with foreign counterparts, and implementing the 2006 U.S. SAFE WEB Act. She also represents the FTC and the U.S. in international organizations on such issues as e-commerce, identity theft, and consumer dispute resolution and redress. Stacy helped organize international conferences and drafted guidelines that have influenced national policies. She started her FTC career prosecuting false advertising cases and working on media violence issues. Stacy received the Outstanding Team Award in 2000 and the Janet D. Steiger Award in 2005.



- **International Enforcement Organizations.** The FTC has continued to expand relationships with consumer protection law enforcement partners in international organizations. For example, the FTC is active in the International Consumer Protection Enforcement Network (ICPEN). This year, the FTC supported ICPEN's operations by coordinating its working group on Deceptive/Fraudulent Advertising and hosting the ICPEN intranet and econsumer.gov, a multi-agency, multilingual site for cross-border e-commerce complaints. The FTC also helps lead the London Action Plan (LAP), a global network of industry representatives and law enforcement agencies from more than 20 countries working together to fight spam, phishing, and other online threats. In October 2008, FTC helped organize LAP's annual meeting, held jointly with the 6th German Anti-Spam Summit. The conference included a detailed discussion by officials from Australia, New Zealand, Canada, and the FTC on coordinating multi-agency anti-spam actions.

B. International Consumer Protection Policy Cooperation

Global trends require the FTC to engage in policy efforts to develop flexible, market-oriented standards to address long-standing and emerging consumer protection issues. To achieve these goals, the FTC is committed to bilateral cooperation with its counterparts, in addition to active participation in international organizations.

Bilateral Relationships. The FTC is working to strengthen cooperation and coordination with foreign counterparts by negotiating bilateral consumer protection agreements. The Commission is currently negotiating international mutual assistance agreements with Canada and the EC using authority under the U.S. SAFE WEB Act. The proposed agreement with the EC was a formal agenda item at the December 2008 Transatlantic Economic Council, and the U.S. and EC negotiators are working to conclude an agreement.

Participation in International Consumer Policy Organizations. The FTC has a long track record in international consumer policy fora and continues to play a leadership role in the OECD's consumer protection policy work. The FTC worked with other U.S. and foreign agencies on policy guidance supporting the OECD's June 2008 Ministerial meeting on the *Future of the Internet Economy*. The meeting addressed numerous international consumer protection technology and internet-related issues, including protecting and empowering consumers in communication services, radio frequency identification (RFID), online identity theft, and emerging issues related to mobile commerce. The FTC also regularly submits comments in response to requests from foreign counterparts, such as April 2008 comments in response to the U.K.'s consumer law review. The FTC continues to work with international organizations such as the Organization of American States on consumer policy work, including a U.S. proposal on cross-border consumer dispute resolution and redress. The FTC's expertise and knowledge in the international policy arena also led to international interest and participation in some of the agency's key policy initiatives with global dimensions, such as the online behavioral advertising principles and the mobile marketplace workshops.

Emphasis on Privacy and Security Issues. The FTC continues to strengthen international cooperation on protection of consumer privacy and data security matters. This year, the FTC sponsored several events to gather information and discuss different approaches to these issues.

- **Radio Frequency Identification.** FTC staff submitted comments to the EC in response to its draft recommendation on the implementation of privacy, data protection, and information security principles in applications supported by RFID. Among other things, the staff expressed its views that enforcement of existing laws, coupled with industry self-regulation, is the best way to address consumer privacy and data security concerns related to the deployment of RFID technology.
- **Securing Personal Data.** The FTC, in conjunction with APEC and the OECD, hosted an international conference titled *Securing Personal Data in the Global Economy*, which addressed how companies can manage personal data security issues in a global information environ-



ment where data can be stored and accessed from multiple jurisdictions.

- ▶ **Cross-Border Data Transfer.** The FTC continues to participate, along with other U.S. government agencies, in a pilot project to develop a system for cross-border data transfers under the Asia Pacific Economic Cooperation Privacy Framework.

Alex Tang - OGC

A key resource on administrative law issues, Alex has been an attorney on the legal counsel side of the General Counsel's Office for almost 25 years. As a Vice Chair of the agency's Privacy Steering Committee, he is the office's chief expert on the Privacy Act of 1974 and other federal privacy and information security requirements, including digital and electronic statutes such as the E-GOV and E-SIGN Acts. In addition, he provides legal, ethical, and procedural advice to agency officials and staff on a wide range of other matters, including investigational, rulemaking, and adjudicatory proceedings, procurement, appropriations, and personnel issues.



Chapter 9: Outreach and Technical Assistance

More than 100 jurisdictions now have competition or consumer protection laws. Therefore, the FTC has expanded its long-standing program of technical assistance to help newer agencies apply their laws in ways that support free markets. The FTC and DOJ continue to work with other U.S. government funders, including the U.S. Agency for International Development (USAID), the U.S. Trade and Development Agency (USTDA), and the Commerce Department's Commercial Law Development Program (CLDP), to provide technical assistance. For example, in 2008, the FTC sent 41 staff experts to 21 countries on 31 technical assistance missions. These included continued USAID funded work in the 10-nation ASEAN community (including Indonesia and Vietnam), and training programs in Argentina, CARICOM (the Caribbean Community), Central America, China, Colombia, Egypt, Romania, and Turkey. The most significant technical assistance opportunities and challenges involve the world's most populous country. The FTC's engagement with China includes joint FTC/DOJ support for an extensive public/private sector program of technical assistance for the three Chinese antitrust enforcement agencies. Partially funded by USTDA, this program has already provided programs on merger remedies and horizontal agreements.

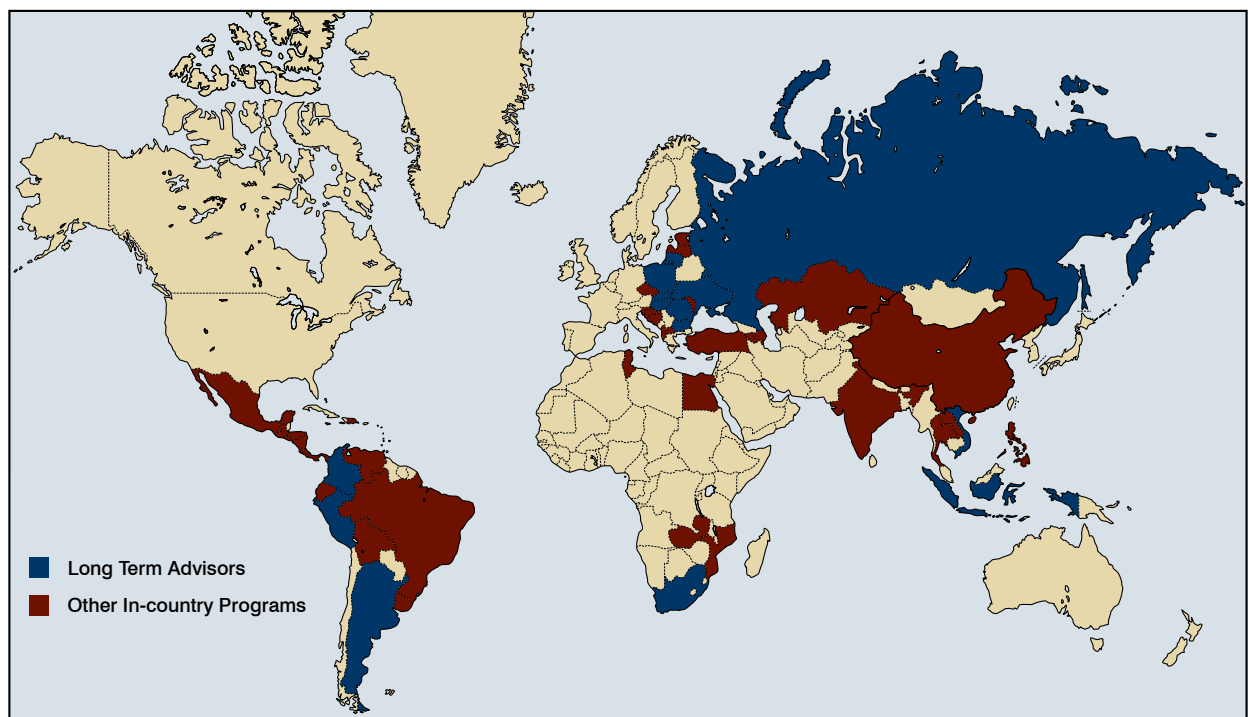
Long-standing players in the technical assistance arena, like USAID, have taken the lead in providing support to developing countries. Understandably they are not able to serve all countries and all needs. Accordingly, this year, the FTC funded technical assistance programs to countries not typically served by USAID and addressed topics typically outside the ambit of the existing

FTC/DOJ program funded by USAID. Specifically, the agency funded technical assistance to Brazil and Turkey and addressed consumer protection topics of concern to recipient agencies.

As part of its ongoing effort to build effective relationships, the FTC's International Fellows and Interns program provides opportunities for staff from counterpart foreign agencies to spend several months at the FTC to work directly with FTC staff on investigations, subject to appropriate confidentiality protections. During the past year, the FTC hosted 12 International Fellows and Interns from Argentina, Australia, Austria, Brazil, Canada, Egypt, Hungary, Israel, Mexico, and Turkey.

As another means by which to strengthen relationships, the Commission, for the first time, used its new U.S. SAFE WEB Act authority to send select staff members to work directly for foreign counterpart agencies for three to six months. Similar to how details from other agencies function in the U.S., these assignments provide invaluable opportunities for FTC staff members to obtain a keen understanding of their international partners' laws and challenges. This knowledge provides critical support for coordinated enforcement efforts and ultimately benefits U.S. consumers. This year an FTC Office of International Affairs attorney spent six months working for the international section of the U.K.'s Office of Fair Trading. Plans for the coming year include sending an economist to work for the U.K. Competition Commission and a merger attorney to work for the EC's Directorate General for Competition.

Technical Assistance Missions



Champions of Veterans Enterprise Award

The FTC was awarded the 2008 Champions of Enterprise Award from the U.S. Department of Veterans Affairs for the work of its Acquisitions Branch in putting veterans and service-disabled veterans first in the agency's contracts. The award honors government organizations that have opened doors of opportunity for veterans in business through unique, innovative, or comprehensive support.

Finally, the FTC also has broadened its assistance program this year by placing two resident advisors in Latin America, who divided their time between Peru and Colombia, and one resident advisor in South Africa. These resident advisors provide training and guidance to local agency staff on investigative techniques and policies.



Looking Ahead



The Federal Trade Commission building is significant as the last building completed within the Federal Triangle. The Triangle includes such buildings as the Italian Renaissance inspired Commerce Department to the west and the French classic New Post Office on Pennsylvania Avenue at 11th Street. These earlier constructed buildings contain lavishly finished public spaces and executive suites. By contrast, the Federal Trade Commission building reflects the relative austerity of the period 1937-1938. Earlier schemes for a Beaux Arts derived building were simplified in form to achieve a design of greater economy, both in actuality and in symbolism. Erected during the worst years of the Depression, the building's budget was twice reduced with the result that the interiors display a simple but refined functionalism.

Drawn from General Services Administration website



Looking Ahead

This has been a year of taking stock. Through the FTC at 100 project, the Commission has examined what direction the FTC should take as it embarks upon its second century; what the agency does well; what can be improved; and how the institution and its essential ties with other public and private institutions both here and abroad can be strengthened. It has also been a year of addressing the many “here and now” challenges presented by the deteriorating economy. Increased globalization, rapid changes in technology, and the ever deepening recession have required the Commission to adapt and respond quickly. These same challenges will likely continue to demand the Commission’s attention in the coming year. The Commission will continue to consider how it can build on its institutional strengths and, as it carries out its antitrust and consumer protection missions, it will continue to emphasize financial services, health care, privacy, energy, and technology – those areas of greatest impact on American consumers.

On the antitrust side, deteriorating economic conditions demand that the Commission remain ever vigilant in protecting competition, which spurs innovation, productivity, growth, and cost effectiveness. With the rapidly rising cost of health care, the FTC will continue to work to eliminate threats to competition that deprive consumers of low-cost drugs. The agency will work to stop anticompetitive agreements among physicians, and monitor hospital, pharmaceutical, and other mergers that threaten to raise the cost of health care. The Commission will stop attempts to manipulate prices through unlawful unilateral or collective action. It will continue to study and provide guidance to businesses in technology industries, to ensure that competitive forces provide incentives for investment in new ideas. The Commission will act on evidence of market conduct that unreasonably interferes with the innovative process, so that consumers have the final choice in which products succeed in the marketplace.

On the consumer protection side, the Commission will continue to protect cash-strapped consumers from unfair and deceptive credit schemes and ensure they get the information they need to make informed decisions about the use of credit in this challenging economy. Addressing the full life cycle of financial services transactions affecting consumers, the Commission will work to protect consumers in the areas of subprime credit, payday lending, fair lending, mortgage advertising and servicing, and debt collection and settlement. It will also continue its empirical work on how consumers absorb financial information and how they perceive disclosures associated with routine financial transactions, so consumers can be armed with understandable information with which to protect themselves. As the nation considers how it can control the impact of its consumption on the

environment, the Commission will be at the forefront of ensuring that consumers are getting truthful information about how products affect the environment.

To ensure that American consumers are the recipients of truthful, nondeceptive information and are on equal footing so they can participate fully in this global economy, the Commission will continue to devote significant resources to building relationships and processes that foster cross-border cooperation and, where appropriate, convergence towards best practices. Building strong international partnerships is essential to the effective enforcement of laws to protect U.S. consumers given the increasingly cross-border nature of fraud, spam, spyware and privacy issues. To provide leadership in establishing best practices to protect competition in the global marketplace, the Commission will continue its critical work with larger multinational networks like the ICN and OECD and bilateral partners like the EU Directorate for Competition and Canadian Competition Bureau. Through the continued expansion of its technical assistance programs, the Commission will help build the capacities of the competition and consumer protection agencies of developing countries so that they can become full partners with the Commission. The Commission will continue to work to ensure a safe, competitive global marketplace for the benefit of all Americans.

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FTC 2008 Annual Awards

Chairman's Award

Lucy Morris, BCP

Lifetime Achievement Award

Pauline Ippolito, BE

Louis D. Brandeis Award

Leslie Melman, OGC

Janet D. Steiger Team Award

FOCUS Team
Food Marketing Report Team
Inova/Prince William Hospital Merger Team
International Competition Network Team
Mortgage Foreclosure Rescue Team

Richard C. Foster Award

Edwin Acajabon, BCP
Charles King, OED
Richard Levy, BC
Maria Villafior, BE

James M. Mead Award

Joel Nguyen, OED
Ashley Vo, BCP
James Whitelaw, BC

Paul Rand Dixon Award

Wallace Easterling, BC
Karen Grimm, OGC
Chetan Sanghvi, BE
Brian Telpner, BC
Tracy Thorleifson, NWR
Monica Vaca, BCP
Joannie Wei, OGC/MWR

Mary Gardiner Jones Award

Harold Saltzman, BE

Excellence in Supervision Award

Sara Dillon, BC
Margaret Mech, OED
Suzanne Michel, BC
Jessica Rich, BCP
Christopher Taylor, BE

Otis B. Johnson Award

Kathleen Claffie, BCP
Nathan Hawthorne, BC
Dolores Wood, OED

The Francis Walker Award

Steven Tenn, BE

Outstanding Scholarship

Daniel Hosken, BE

Stephen Nye Award

Danica Noble, BC
Sandhya Prabhu, BCP

A. Leon Higginbotham, Jr. Award

Armando Irizarry, BC
Rosario Mendez, BCP
Edwin Rodriguez, BCP
Leonor Velazquez, BC

Eleanor F. Greasley Award

Christopher Bryan, OGC
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In Memoriam

Frank Douglass

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In 1937 Sidney B. Waugh, who had previously designed massive and important pieces for Federal Triangle buildings, agreed to design two matching reliefs for the northwest corner of the Federal Trade Commission building. The Section of Painting and Sculpture instructed the artist that the subject was the “American Eagle” and asked that he develop a fresh interpretation on the symbol. The commissioning body disapproved the first eight submissions, with much discussion concerning the proposed use of shields, spears, and fasces in the birds’ talons. The ninth design, eagles vigilant, but at rest, was accepted and eventually carved in limestone and installed in early 1938. The result was a highly stylized design that integrated fully with the building’s other modern works.



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